

DYING

to be **FREE**

The Struggle for Rights
in Mwea



Errata

Page 11:

Footnote 17 should read: Azariah Muriuki's statement, KHRC files

Footnote 18 should read: These regulations governed the Scheme until the farmers' resistance in 1999

Page 12:

Footnote 19 should read: Interview with Joseph Gachanga, Nguka Village, June 25, 1999

Footnote 20 should read: Ibid.

Footnote 21 should read: This point was repeatedly stressed by the farmers interviewed. Other researchers have encountered the same view. See for instance, Karuti Kanyinga and Cleophas Torori, "Into the New Millenium in Kenya: Reconstructing Civil Society from Below," (Nairobi: NGO Council, unpublished paper)

Cover photographs

Top:

Police move to stop demonstrating Mwea farmers in 1999

Bottom:

The 1998 harvest that farmers refused to deliver to the National Irrigation Board in one of the makeshift stores that they constructed

Inset:

Police guard the National Irrigation Board personnel collecting the 1998 rice harvest

Photographs courtesy of Nation newspapers

Dying to be Free

The Struggle for Rights
in Mwea

Kenya Human Rights Commission
2000

MISSION STATEMENT

The Kenya Human Rights Commission (KHRC) is a non-governmental membership organization founded in 1992. It has an observer status with the African Commission on Human and People's Rights. KHRC is the 1998 winner of the MS International Award, bestowed in Denmark.

The mission of the Commission is to promote, protect and enhance the enjoyment of the human rights of Kenyans. It does this through monitoring, research and documentation of human rights violations. It organises activist events and undertakes public awareness campaigns on human rights. KHRC is committed to mainstreaming gender in all its programmes and initiatives.

KHRC is committed to the realization of human rights ideals in Kenya by strengthening the human rights movement. KHRC supports social, political, economic, and cultural change aimed at enhancing respect for the rule of law, the development of a society that upholds democratic values, a society aware of its rights and comes to their defense whenever threatened or attacked.

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KHRC strategic objectives are to:

- Reduce human rights violations in Kenya
- Strengthen the human rights movement in Kenya
- Hold state, institutions and individuals accountable for human rights violations
- Raise awareness of human rights in Kenya
- Place Kenya on a truly democratic trajectory

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Dedication

This report is dedicated to the late Maina Karuiya and Chege Mukundi, two young men who lost their lives fighting for the right to human dignity and just reward for their sweat. To the many other struggling peoples of Kenya and the world, their life will forever be an inspiration.

Acknowledgements

This report has been authored by Mutuma Ruteere. It is however the result of efforts by various people. Wambui Kimathi helped in field research and edited the various drafts. Eva Kiiru did the archival research. Willy Mutunga was instrumental in clarifying the theoretical framework on various occasions in addition to his editorial comments. Mugambi Kiai helped in making friendly the legal jargon. Njuguna Mutahi and Odenda Lumumba also made invaluable comments and input into the various drafts. Cover design and layout was done by Amanya Wafula.

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In different ways, the entire staff of the KHRC has been key in making this report a reality. Many thanks to all of you.

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Preface

The idea of integration that this report explores is a reflection of the continued search for a truly democratic society. As an idea integration has been around for quite some time and goes as far back to the events of the 1917 Bolshevik Revolution in Russia. That revolution was about the realisation of the fullness of the human potential. This quest and struggle was the context for the First and the Second World Wars.

The Universal Declaration of Human Rights adopted by the United Nations in 1948 in recognising human dignity as the basis for human rights re-affirmed that human rights could only be enjoyed if they are promoted and protected in an integrated manner. In adopting welfare capitalism, many western countries were motivated by the recognition that the only way revolutions could be staved off is by addressing the issues of poverty and deprivation within their societies. Thus although in 1966, the UN was forced to adopt two separate covenants, the International Covenant on the Civil and Political Rights and the International Covenant on the Economic Social and Cultural Rights, this was basically a response to the ideological hostilities of the Cold War rather than a repudiation of the integrated nature of rights.

Against this background therefore, it is unsurprising that in 1993, a meeting of representatives of governments and scholars of human rights adopted the Vienna Declaration and Programme of Action reaffirming the principle of integration. With the ideological hostilities of the Cold War over, doors have reopened for the reinforcement of the principle of integration.

At the Kenya Human Rights Commission (KHRC), we recognise that liberal democracy contains the opportunities for the promotion of human rights. Social democracy as its developing in various corners of the world today is a recognition that governments and human society must respond to the people's daily needs such as food, water and shelter.

In doing this research the KHRC has sought to demonstrate that human rights work must adopt the integration framework if it is to have any real meaning to the people that it seeks to benefit. By analysing the struggles of survival by Mwea farmers, *Dying to Be Free* has endeavoured to debunk the myths of categorisation of human rights into civil/political and social/economic/cultural.

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For the Mwea farmers, their livelihood depends on their survival and freedom in a democratic Kenya. It is up to the human rights discourses to reflect the farmers' concerns.

The greatest challenge to the human rights movements the world all over still remains how to rescue the world from the clutches of the supremacy of market, what we now call globalisation or the new world order.

Dr Willy Mutunga
Executive Director

Introduction

'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'

– *Vienna Declaration and Programme of Action*

The struggle for human rights is instrumental. This means that it must be a struggle anchored on and in consonance with communities' efforts to improve themselves. Consequently, human rights workers must be one with the communities they work with. They must respond to the communities felt needs within the reality that the community perceives. This is the only way they can achieve legitimacy and avoid the curse of illegitimacy that has dogged the African post-colonial state.¹

Thus human rights workers involved in the struggles for human rights friendly constitutions and democratic political systems are being daily challenged to provide a domestic language, perspective and strategy to this struggle. In response to this challenge, human rights workers have been experimenting with utilising the communities' perspectives in the search for constitutional reforms and human rights promotion and protection. Such perspectives mark a departure from project approach often addressing sectoral issues to integrated approach which is comprehensive and looks at 'human rights and development as complementary and mutually reinforcing means of achieving social justice for all.'²

The result of this experiment is the realisation that popular struggles for human rights in Kenya are premised on an integrated approach. In many places small scale struggles on the very basic needs for survival have involved demands of a complex matrix of rights. Everywhere, communities have been making vital

¹ For an elaboration of this illegitimacy argument, see generally, Makau wa Mutua, "Why Redraw the Map of Africa: A Moral and Legal Inquiry" in 16 *Michigan Journal of International Law*, 1113;

² See, Miloon Kothari in *Development and Social Action*, ed. Deborah Eade, (London: Oxfam GB), 1999, p.14

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connections between poverty, bad governance, denial of political choice and oppressive laws.

Rather than settling for a purely theoretical analysis of the integration of rights, this report has chosen to isolate a community's struggle as a practical argument for an integrated approach to human rights work.

The report focuses on Mwea Irrigation Scheme, a community of farmers whose struggle for survival became nationally visible in 1999. That however, is not the basis of the choice of Mwea for this study. Rather it is the centrality of the Mwea Irrigation Scheme in rice production in Kenya and its prototypical value as a case study in the integrated violation of rights as well as the integrated defence of those rights. As an agricultural enterprise, Mwea produces 80% of the country's total rice production.³

The Mwea Rice Irrigation Scheme in Kirinyaga District of Central Province of Kenya was established by the British colonial authorities in 1950. It was built by detainees of the Mau Mau war of independence. Following their release some were settled on the land to begin the experiment on rice production under the supervision of the colonial government. The land was owned by the nine Kikuyu clans or *mihiriga* with the local African Council as a trustee. The paternalism that underlay the entire process of colonialism was still alive and in the colonial mind, the African could not yet be trusted to independently engage in production of cash crops. Close supervision was to be exercised.

Management of the Scheme was by the African Land Development Organisation, commonly known as ALDEV. Necessary funding was channelled through ALDEV.

Following independence in 1963, the management of the Scheme was transferred to the Ministry of Agriculture. In 1966, an Act of Parliament, The Irrigation Act,⁴ transferred the management of the Mwea Irrigation Scheme to the National Irrigation Board (NIB). In spirit and in effect, the Irrigation Act was the successor to the African District Councils Ordinance under which the Scheme was previously governed. The wording and philosophy of the Irrigation Act was an unequivocal perpetuation of the paternalism and dictatorship of colonial agricultural laws.

After independence, the Kenya government, the heir to this colonial instrument

³ Mwea Rice Growers Multipurpose Society Limited, September 1998, Project Proposal, Also, NIB, 1994/95 Annual Report).

⁴ See appendix 6 for relevant sections of the Act

of serfdom set out to vigorously utilise it for the purposes of continued revenue generation. The NIB and the Provincial Administration through District Commissioners and District Officers, chiefs, assistant chiefs and administration police officers, as in the days of colonialism were employed to oversee and enforce this agrarian tyranny.

The analysis of the Mwea Irrigation Scheme brings to the table of discussion what this report considers a crucial elucidation of the integrated approach to human rights.

First is the illegitimacy of the legal regime under which the Mwea Irrigation Scheme was established and managed. It was built by detainee labour- political detainees who had not been sentenced by any competent court to do the hard labour that building the Scheme canal network involved. This same legal regime was executed by a government that based its claim to power on a popular constitutional legitimacy. The report seeks to demonstrate that the philosophy behind the agriculture laws in Kenya is at odds with the Bill of Rights in the Kenyan Constitution and in violation of the principles of the International Bill of Human Rights.

Second is the relationship between the political infrastructure and the economic infrastructure in promoting human rights violations. What was purely economic in Mwea was managed by purely political and administrative logic through the provincial administration.

Third is the relationship between the socio-economic deprivation in Mwea and the enjoyment of civil and political rights. How did the legal regime and its political/ administrative execution affect the rights of Mwea farmers?

By addressing these issues this report does not claim to have discovered a unique approach to human rights work. Rather it attempts to give a practical assessment of the interrelatedness of all human rights- an idea that has already been given popular expression by the 1993 Vienna Declaration.

Ultimately this report hopes to demonstrate that poverty is not an issue of apolitical forces of economics. In many instances it is induced and tailor-made to achieve certain ends or preserve certain status quo. By proving that poverty and deprivation in Mwea is a response to a tune of a dictatorial form of governance, this report will hopefully put to rest the myth of the dichotomy between human rights and development work.

Hopefully too, other human rights researchers will make their contribution to

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Hopefully too, other human rights researchers will make their contribution to

this approach and/or give it a whole new dimension. If this happens, the objectives of this report will have been considerably achieved.

Methodology

Since the integrated framework that this report propounds is people-based, it lets the Mwea people tell the story of their struggle in their own imagery and perspective.

This has involved several interviews with the farmers. In some cases, the interviews have been on a one to one basis with particular farmers, both men and women. Focus group discussions were also held with groups of both men and women separately. Although a youth-specific group discussion was not conducted the youth were interviewed on a one-to-one basis on issues specific to them. Even when interviews were with an individual farmer, the communal nature of the experience always led to the respondent requesting others to join in or they invited themselves into the discussion anyway. This has greatly helped in cross-checking the veracity of information by tapping from the collective memory. Focus group discussions also targeted the community leaders, specifically, the Mwea Multipurpose Society leadership that was deemed a critical player.

Interviews with the area Member of Parliament were very useful. Besides being a central figure in the high profile battles with the NIB, the MP provided to the struggle an active political and national dimension.

Archival research was also done and provided the vital data on the policy environment under which the irrigation Scheme was conceived. This research also analysed and benefited from various policy and legal documents relevant to the Mwea experience.

The report was also subjected to a select group of resource persons for critique. The critique not only helped clarify certain issues but also enriched it by bringing in new perspectives and interpretation to the subject of integrated approach to human rights.

CHAPTER ONE

Mwea in Historical and Agrarian Context

“Mwea irrigation scheme was not built with any money, but the work of our hands.”

– *Mzee Azariah Muriuki, Mwea rice farmer
and former Mau Mau war detainee*

Mwea, a division of Kirinyaga District in Central Province rests at the southern foot of Mt. Kenya. It marks the beginning of the plains that extend to the southern slopes of Mt. Kenya, through Nairobi, to Kajiado and into Tanzania.

In spite of its close proximity to Mt. Kenya, Mwea is not endowed with the same rich soil as neighbouring coffee-rich Mathira Division of Nyeri District. In the dry season, the harsh temperatures scorch the grass leaving the soil open to the powerful winds. This is the reason why for a long time Mwea remained a grazing land unpopular for settlement by the agricultural Kikuyu and Embu people and the trading Kamba until British colonialism transformed the patterns of settlement.

The Mau Mau war of independence that broke out in 1950 marks a watershed in the history of Mwea. Land was a central concern to the Africans. Following colonisation, the British alienated massive tracts of land around the Mt. Kenya area and Rift Valley to create what was known as the White Highlands. These lands were not empty in spite of the colonialists assertions to that effect. There was a communal land tenure system in existence. The economic and political setups of Kenyan Africans demanded an open field system of land ownership. While the higher lands around Mt. Kenya were reserved for agricultural farming and settlement the Mwea plains were the grazing grounds for the neighbouring Kikuyu, Embu and Kamba people.

With the alienation of the White Highlands, Africans found themselves edged into marginal areas and into reserves. Extra-economic measures imposed to coerce Africans into selling their labour cheaply to the settlers coupled with land shortage and food inadequacy adversely affected the African economic

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and social systems. Africans found themselves strangers on fields that for generations their ancestors had owned.

Consequently, the struggle for independence became not just a war for political independence but a quest for basic survival and restoration of their dignity as human beings. Land was central to this quest and the initial organised group was known as the Land and Freedom Army. Africans also started organising politically. Associations like Kenya African Union (KAU) were formed. Leaders like Jomo Kenyatta, Bildad Kaggia and Oginga Odinga, Achieng' Oneko and Tom Mboya became very visible in agitating for political freedom. Others like Dedan Kimathi started organising for a military option. To quell the murmurs of discontent, the Colonial authorities in 1952 declared a state of emergency. Africans retreated to the jungles of Mt. Kenya to wage a full scale war to which the colonial authorities responded by mass arrests and detentions. Security operations were carried out in Nairobi and special passes introduced for the Gikuyu, Embu and Meru people.

Many were detained in various parts of the country. When towards the end of the war, in 1956 and 1957, the colonial government started a phased release of the detainees, Mwea became a holding ground for these detainees before their release. Detainees were to provide the labour to clear the land and dig canals.

When eventually they were released, the detainees discovered that land demarcation had already taken place in their areas to their exclusion. They were now landless. With no other land to settle on, these detainees would become the specimen for the colonialists' experiment in rice farming in the semi-arid foot of Mt. Kenya. While its flatness made it a suitable site for an irrigation project its desolation made it ideal as a camp for Mau Mau detainees.⁵⁵ The detainees provided the labour.

Today, few of the men who were detainees and built the scheme are still alive. Among them is Mzee Azariah Muriuki who has been a representative of the farmers in the government managed Scheme for many years.

Our oppressors told us that we had to build a settlement if we were to get land. We were brought here from various detention camps where we were prisoners. We came from Manyani, Lang'ata, Mackinnon, Mageta, Lanu and Hola. When we were brought here we started another detention camps series. There was Kanjurui Camp, Tebere Camp, Kandonga Camp, Thiba Camp, Wamunu Camp, Gathigiri Camp and Karaba Camp. All these were detention camps within Mwea.

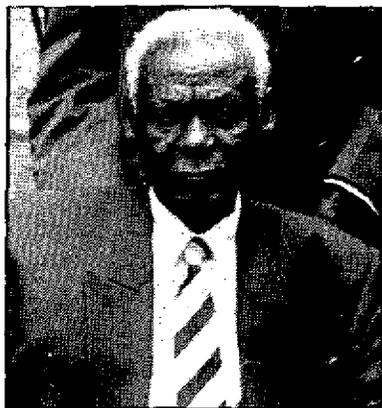
We built two main canals, Mwea Canal with its headworks at Kanjurui Camp

⁵⁵ KHRC, *The State and Land: Case Studies in Corruption and Mismanagement* (1999) p. 25

and Nyamindi Canal with its headworks at Tebere Camp. We built all drains and feeders. We built all roads, made culverts for bridges. We levelled all lands. We built all the houses and latrines in the village.

We built all these with our bare hands. No money was used. We were not paid anything. All we got was a little food and medicine in times of illness. Very many people died of hunger and diseases. Very many others died from the hard labour and the beating.⁶

There was no promise for settlement for the detainees after completion of the Scheme. The detainees were, after all, not yet free people. However, some of the detainees were released and were given holdings. They set up the first settlement in Mathangauta, Murubara, Gathigiriri and Nguka villages. Others were sent away to Kanja in Embu District still as detainees. They were used to dig a 22 by 14 feet deep trench that was called 'Munyutu'. The colonial authorities had ordered for the digging of this trench around Mt. Kenya to cut off the Mau Mau fighters operating from the Mt Kenya forest from the villages. In the West, the Nyeri people were digging a similar trench while in the east the Meru and the Embu were digging their bit.



Mzee Azaria Muriuki

From Kanja this group of detainees was sent to Ndongoini Camp in Karumandi area of Gichugu Division in Kirinyaga District. There they were made to dig another trench and join it with the section dug by the Nyeri people. After completion of the trench, they were set free around 1960. Those who had nowhere to go were taken back and settled in Mwea.

The Mwea Irrigation Scheme was established in 1950 by the British colonial government through the African District Council's (ADC's) Ordinance of 1950⁷. The administration of the scheme was to be through the Mwea/Tebere Committee, whose chair was the District Commissioner. The Scheme was conceived as a settlement area for landless Kikuyu dispossessed of their land by British settlement, a kind of "sink" into which to pour all the landless and aggrieved.⁸

⁶ Mzee Azaria Muriuki's statement, KHRC files

⁷ See ADC Ordinance, 195 and Revised Edition, (1959), appendix 5

⁸ Minutes of a meeting of the Land Development Committee (Non-scheduled Areas) held on Monday, June 17, 1957 at the Ministry of Agriculture, Nairobi

The Legal Regime

The foundations of current day agrarian legal regime in Kenya were laid under colonialism. Kenya was marked out as a settler colony. Settler agriculture was heavily dependent on African labour without which it was unsustainable. Thus the colonial government introduced a wide range of extra-economic measures to ensure the continued supply of this cheap labour and to keep the labour cheap.¹⁰

One of these strategies was to drive Africans into the Reserves, which were marginal for agricultural production as a way creating food insufficiency among Africans. This food insufficiency would compel Africans sell their labour to settlers.

In addition, the colonial government imposed a wide range of taxes on Africans as a way of forcing them to provide labour to the settler agriculture.

However, all these measures failed to retard African agriculture. In addition to farming within the reserves Africans who were settled in the White Highlands as squatters providing labour to the settlers were engaged in highly competitive agriculture to such an extent that 'as early as 1917, the District Commissioner of Naivasha reported that "agriculture has made little progress except at the hands of native squatters" '¹¹

To protect settler agriculture from competition from African agriculture, the colonial government enacted a series of Ordinances that controlled the marketing of African produce. In 1935, the Marketing of Native Produce Ordinance was enacted to control the volume of produce that Africans could sell within a given year a particular region.

In line with the colonial ideology of 'paternalistic authoritarianism',¹² even where Africans were allowed to grow cash crops as under the Native Grown Coffee Rules of 1934, it was under the close supervision and 'guidance' of the Europeans.

Thus African agriculture in Kenya was only allowed to grow under the control

⁹ The African District Councils Ordinance, 1950 (revised edition, 1959), appendix 5

¹⁰ See generally, Berman, Bruce, *Control and Crisis in Colonial Kenya: The Dialectic of Domination*, 1990, James Currey, London

¹¹ Berman, Bruce, *Control & Crisis in Colonial Kenya: The Dialectic of Domination* 1990, p. 149; For a fuller discussion on squatter agriculture see generally, Kanogo Tabitha, *Squatters and the Roots of Mau Mau 1905-63*, Heinemann, Kenya, 1987

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of administrative and political logic rather than the economic logic, that would have left African agriculture to grow undirected.

All these laws were inherited by the independence government in their untrammelled nature with minor adjustments. The Provincial Administration that had been used to enforce the agrarian dictatorship was inherited by the independence government and was to continue playing the same role it had played under colonialism.

The African District Ordinance of 1950 (revised in 1959) under which the Mwea Irrigation Scheme was born was one such law. Under this law, the only input the farmers had into the running of the Scheme was through the African Advisory Committee which was to be appointed by the Chair of the African District Council of Embu. The Chair was a European. The African Advisory Committee was to be made up of:

- a. one or more chiefs or sub-chiefs appointed under the Native Authority Ordinance.
- b. not less than three other persons selected by the Chairman in consultation with the licensees or such of them as he deems it practicable to consult.¹³

Under this Ordinance the African District Council of Embu (Mwea) By-laws, 1960 were made. These By-laws spelt out the relationship between the management of the rice scheme and the tenants. The management had absolute say over the growing and marketing of the rice within the scheme. The By-laws also spelt out the terms under which the tenants were to live in the Scheme, who could live in the Scheme, the limitations on stock-keeping within the Scheme and the circumstances under which the tenancy could be revoked.¹⁴

In 1966, the Irrigation Act was enacted by the post-independence parliament and the Mwea Irrigation Scheme was placed under the management of the National Irrigation Board (NIB). This Board was appointed by the central government and was to manage the Scheme. The Act inherited the same Rules and By-laws exercised under the African District Councils Ordinance, 1950 (Revised edition 1959). The farmers remained tenants, producing rice under the direction of the Scheme management which was in the real sense the agent of the central government.

¹³ See appendix 6

¹⁴ Regulation 14 (2), The Irrigation (National Irrigation Schemes) Regulations, Subsidiary legislation, the Irrigation Act, cap. 347, Laws of Kenya, see appendix 6

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Thus, under this law, a virtual serfdom was established and perpetuated. Farmers had access to four acres of land but without a title deed. The scheme was to be owned and directed by the NIB represented by the Manager who enforced the regulations spelt out (see appendix 1).

In practice, the manager grants approval on who is to live in the farm. According to Regulation 4 (Subsidiary Legislation) of the *Irrigation Act*, children can only remain on the Scheme as registered dependants of their licensee parents. The regulations also make it an offence for farmers to keep livestock unless authorised by the manager. In the event of reproduction of livestock, farmers are required to register with the manager. Absence of more than one month from the Scheme has to be approved by the manager. In the circumstance that a farmer is jailed for more than six months, they lose their tenancy on the scheme.

All crops grown in the Scheme are under the control of the manager. After a rice harvest, the farmer is required to surrender 'all paddy harvested to the manager at the collection station appointed by the manager, or shall otherwise dispose of it in accordance with the instructions of the manager.'¹⁵

These regulations envisaged and have promoted a temporary tenancy for the farmers. Only the NIB is allowed to market the rice. The farmers have no control. Vehicles into the scheme have to be authorised by the manager before entry.

Under this legal framework, the NIB is the real owner of the land. It is a feudal overlord and farmers are mere 'licensees'.¹⁶

It is evident therefore that in its philosophy, the regime established under the NIB is a replication of the paternalism of the colonial system. Africans were to be 'supervised and guided into civilisation'. By the nature of its authority and paternalism it was as though the NIB was playing the role of 'rehabilitating' the ex-detainees who to the colonial government were criminals. Those who would show signs of 'regression' would be deprived of their property and thrown out of the Scheme.

¹⁵ See appendix 5

¹⁶ Azariah Muriuki's statement, KHRC files

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CHAPTER TWO

Living in Servitude

'Even Egypt was better for the Israelites than this.'

– Joseph Gachanga, Mwea farmer

Mwea represents an articulation of the disillusionment with the post-independence government – the corruption, leadership crises and infrastructural collapse that have been the defining marks of Kenya in the last three decades.

With the euphoria of independence in 1963, the Mwea farmers like other Kenyans hoped for an economic take-off. Fresh from the horrors of colonialism, the possibility of being involved in cash agriculture was more than a breath of freedom. As they found out this was not to be. Soon the colonial foundations and the legal shackles erected by the *Irrigation Act* began to take a painful bite.

From the very beginning however, farmers had no illusions about the import of the regulations under which they were settled. Indeed, Mwea farmers were opposed to the rules from the very day they were introduced. In 1962, the Land Irrigation Rules, the predecessor to the rules under the 1966 *Irrigation Act* were introduced. Farmers refused to sign them. Azariah Muriuki recalls:

We had just come from detention. Bruce Mackenzie, the then Minister for Agriculture sent Jeremiah Nyaga (who was the an elected member of the Legislative Council) to plead with us. He spoke to us at the Kiarukungu Youth Centre and said, '*Wananchi – tieni sahihi sheria hizo tukapande juu ya miti simba apite. Tutaka-popata uhuru huu tunaopigania hizo karatasi tutatarua*'. (Citizens – just sign those rules so that we can climb trees and let lions pass. After we attain the independence we are fighting for, we will just tear up that piece of paper).

We all clapped and agreed to sign the rules. It is very sad that even today we are still on the trees. Lions have not left Mwea, they are still here with us. We know that the Kenya Government chased away lions from this country (British Government) but hyenas and foxes are still here with us.¹⁷

According to the NIB regulations¹⁸ farmers have to deliver all the harvest to the

¹⁷ These regulations governed the Scheme until the farmers' resistance in 1999

¹⁸ Interview with Mr Joseph Gachanga, Nguka Village, June 25, 1999

NIB after harvesting. After delivery the manager decides the number of bags to give to the farmer for consumption, usually, twelve. As rice in Mwea is a one season crop per year, farmers have to make do with twelve sacks for the whole year irrespective of family sizes and in spite of the worsening economic situation. These twelve bags are usually paddy, that is unmilled rice. After milling, the farmer is left with less. One farmer, Joseph Gachanga explains:

These twelve bags are everything- food, money to buy vegetables, cooking fat, soap, clothes, educate the children and pay for hospital bills.¹⁹

Food inadequacy therefore has been a recurrent problem to the Mwea farmers. This has meant that farmers have not been able to send their children to school and when they have, the children's performance is negatively affected by this inadequacy. One of the farmers explains:

Other Kenyans got independence but not us as we cannot educate our children. I have been farming all along and I get nothing. I have two children in school and have difficulties in paying school fees. Even Egypt was better for the Israelites than this.²⁰

The food inadequacy in Mwea is induced by the administrative shackles that the NIB has placed on farmers and parallels the inducement of food inadequacy under colonialism to coerce Africans into selling their labour to the Europeans.

Besides, the relationship of the farmers and the Board is that of slave and master.²¹ Yet rice farming is a hard job. It means spending long hours in the muddy pools under the blazing sun. It entails back-breaking labour from morning to evening throughout the year.

A typical year in Mwea means tilling the land in March with tractors from the NIB. Over the years many of the NIB tractors have been grounded due to poor maintenance. By the time farmers made a break with the NIB in January, 1999, they estimate that the entire Scheme of 15,000 acres was being served by less than twenty tractors. Although the farmers foot the bill of tilling through deductions after delivery of the paddy to the NIB, they are not allowed to contract private tractor owners whose charges are lower.

At issue here is the exemption of Boards like the NIB from the Monopolies and

¹⁹ Ibid

²⁰ This point was repeatedly stressed by the farmers interviewed. Other researchers have encountered the same view. See for instance, Karuti Kanyinga and Cleophas Torori, "Into the New Millennium in Kenya: Reconstructing Civil Society from Below," (Nairobi: NGO Council, unpublished paper), 1999

²¹ Interview with John Njoroge, Ngurubani, September 15, 1999

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Restrictive Practices Act. While the country has been undergoing economic liberalisation the NIB was allowed to remain a monopoly accountable to no one and isolated from the forces of liberalisation. Private companies would be in violation of the Monopolies Act if they were allowed to operate like the NIB has been operating.

After tilling and flooding of the fields, levelling is done mostly using oxen. The land is then left in that state and farmers wait for seeds from the NIB to start nurseries. These seeds are another of the inputs that the NIB provides to the farmers and deducts from their paddy deliveries. In August, transplanting of the seedlings to the fields begins. This is followed by intense weeding (about three), top-dressing with fertilizer, spraying against parasites and later harvesting in December.

All input costs are borne by the farmers. The NIB tills the land, provides the seeds, insecticides, fertilizers and sacks for harvest at the farmers' cost. Farmers have no say over how deductions are made, 'One signs for the inputs and then the NIB decides on what to deduct,' adds a farmer, John Njoroge.

Moreover, the farmer will have incurred many more costs by harvest time. For the four-acre unit, other average cost would be as follows:

Farmers' rice production costs per 4-acre plot

Activity	Average Cost in Ksh
Levelling	4,800
Clearing canals	8,000
Planting	6,000
First weeding	5,000
Second weeding	2,500
Third weeding	2,500
Harvesting	5,000
Total	33,800

Source: Average estimates from interviews with Mwea rice farmers

The average yield from the four-acre holdings is about 80 bags of 80kg for the aromatic Basmati which is produced in 80% of the Scheme. In the case of the high yielding Sidano farmers can harvest about 200 bags. Yet the story of Mwea is one of grinding poverty largely owing to the low prices offered by the NIB. Mwea produces two types of rice, Sindano and Basmati. Basmati is the higher

quality and accounts for 80% of the schemes production while the remaining 20% is Sindano. The NIB has been buying the Basmati variety from the farmers at Ksh. 17.00 per kilogramme when the market price has been Ksh. 32 and Sindano at Ksh. 14.50 per kilogramme.



Preparing rice fields in Mwea

Owing to the deductions, whose figures are set by the NIB, the farmers are left with very little money or even none after delivering the rice. Ndimu Wainaina remembers that in the 1980s she received no money from the NIB after delivering rice worth over Ksh. 18,000. The deductions are myriad. There are rotavation charges (this is for tractor ploughing in flooded fields), handling charges, road, canal, structures charges in addition to the deductions for the costs of inputs that the NIB will have provided to the farmers (see table above).

Calculations by the Mwea Co-operative Society show that annual research deductions from the farmers by the NIB amount to Ksh. 12,819.710.70.²² Yet, as the farmers argue, rice research is in the national interest and the entire country should shoulder its share in the responsibility of financing it and should not be viewed as a responsibility of just the Mwea farmers.

The payments are not immediate after the delivery of the paddy to the NIB. In the 1980s, farmers would deliver rice to the NIB in December and wait until May for payments. That was then. Over the years the NIB started delaying payments. They started paying in September and as one farmer points out, 'By the time we made up our minds about the NIB, there would even be no payments until the following harvest.'²³

By 1997, the NIB had started tightening its screws on the farmers even further.

²² Mwea Rice Growers Co-operative Society Limited "Marketing of Rice and By-Products" Project Proposal September 1998, KHRC files

²³ Interview with Belsia wa Kahiko Nyuki, Nguka village, Mwea, June 25, 1999

They set specific targets, depending on the whims of the manager that every farmer had to meet or lose the tenancy or services of the NIB. The manager has absolute power and discretion and is not accountable to anyone. As one farmer explains, 'failure to meet the expected output leads to repossession of farms by the NIB and their selling them off.'²⁴

To avoid this, farmers whose yields do not meet the set target have to hand back to the NIB some of the rice they have kept for themselves as food. This is what Mary Nduta did in 1998. 'I had delivered 125 bags but the NIB demanded 11 more or they would not plough for me in the following season. I had to hand over what I had taken home.'²⁵ Mary Wangari Njenga who did not meet the 1998 NIB targets, was denied the services of the ploughing.

At harvest time, the farmers woes intensify. The NIB allows the farmer only 12 sacks for food to last the entire year. This limit is irrespective of the family size and change in the economic times. Joseph Ng'ang'a, the Vice Chair of the Mwea Multipurpose Society remembers that in 1960, when he became a farmer, the number of bags allowed to farmers for food was still 12.²⁶

Administration police are sent to patrol the fields to ensure farmers do not smuggle home any of the rice. Women are hardest hit by these conditions as they are the ones who look for food for their families. To beat the police, women carry gourds to the field pretending that they are carrying porridge. 'We then fill up the gourds with rice and cover them with a layer of porridge,'²⁷ explains Mary Nduta. When arrested they have to bribe the police to avoid being locked in.



Mwea MP, Alfred Nderitu

The patrols by the police sometimes extend beyond the field and harvest time as the Member of Parliament Alfred Nderitu explains. 'The NIB management and the Administration Police know exactly how long 12 sacks can last. They then visit houses to inspect who is cooking rice and they are arrested for illegally retaining rice.'²⁸

²⁴ Interview with Belsia wa Kahiko Nyuki, Nguka village, Mwea, June 25, 1999

²⁵ Interview with Mary Nduta, Nguka, June 3, 1999

²⁶ Interview with Joseph Ng'ang'a, Ngurubani, Mwea, November 18, 1999

²⁷ Interview with Mary Nduta Nguka, June 3, 1999

²⁸ Interview with Mwea MP, Alfred Nderitu, Ngurubani, Mwea, June 3, 1999

DYING TO BE FREE

As the twelve sacks are woefully inadequate, farmers devise ways of taking home more rice. They are forced to bribe the Administration Police officers or the NIB officers in order to take home more than 12 sacks. For each sack, the farmer pays Ksh.100 to the police officer. Alternatively the NIB's Agricultural Officers (AO) send their Field Assistants (FA) to extort rice from the farmers to allow them take home more than the twelve sacks. The FA then demands two sacks of rice from the farmer, one for the AO and the other for themselves. The farmer is then allowed to take home 20 sacks.

Rice farming is a labour intensive activity. It involves long hours working in the extremely hot conditions and muddy fields. On average farmers spend eight months in a year in the muddy fields. It is work that involves the entire family, women, men and children. Over the years, with the rise in the population, the small holdings have become less and less adequate in supporting farmers, their children and grandchildren. This has turned many children of the farmers into manual labourers. Poverty levels keep rising. From the initial settlers on the Scheme, to their children and now their grandchildren poverty has become an inheritance bequeathed from one generation to the other.

The general poverty in Mwea has a negative effect on the education of the children as many parents occasionally keep them out of school to assist in the field or to take care of their siblings while they work in the fields. At Karira Primary School within the Mwea rice scheme the head teacher, Dominic Chomba is grappling with what he terms 'chronic absenteeism' of his pupils. He ascribes this to the general poverty in the area:

This is an area of casual labourers. Parents are very poor and have to hire out their labour to survive from day to day. In some cases they take their children with them or keep them at home as they go out to do manual work. Many children drop out of school. By June 1999 we had a total of 542 pupils, 290 girls and 252 boys. Three months later in September the number had dropped to 519, 276 girls and 243 boys. A total of 23 had dropped out.

During peak working time in a class of 60 you get only 20 pupils. The rest are absent. On any day, about 10 students are absent in every class. Many of them cannot stay in class as they have not eaten the previous night. Many are living on porridge only. It's unfortunate the School Feeding Programme failed.

Girls are dropping out and getting pregnant at very early ages. These people here live in villages that are like slums. There are all types of influences.²⁹

Compounding the poverty is the high disease incidence. Rice growing takes place

²⁹ Interview with Dominic Chomba, head teacher Karira Primary school, Mwea, September 15, 1999

under wet conditions. The fields have to be flooded for long periods of time.

Edward Nyaga is the Clinical Officer in Charge at Kimbimbi Health Centre, the main government health facility in Mwea. He identifies the main diseases in Mwea as malaria, and diarrhoeal diseases such as, typhoid fever, amoebic fever, bilharzia and hookworms. Of these, he identifies malaria as the leading problem. He estimates that malaria affects between 65–70 percent of all the patients who visit the facility, while about 20% are diagnosed with either of the diarrhoeal diseases.

Between 20–50 people, Nyaga estimates, are diagnosed to be suffering from bilharzia every month. He points out that the fields are supposed to be treated to prevent bilharzia but this is never done.

According to Nyaga, poor health is contributing to the poverty in the area as it is destroying the productivity of the farmers.

Malaria has a major impact on the economy of the people here. Consider a patient who falls sick with malaria. She/he has to pay Ksh. 20 for tests and also Ksh. 30 for Fancida drug. In the event the malaria persists, another prescription for Quinine cost Ksh. 30. If we do not have the drugs they have to buy from private drug stores at Ksh. 100 per dosage. If this fails another visit for Alphcna will cost Ksh. 650. This goes together with Bluphen at Ksh. 100 and tablets for blood nutrients at Ksh. 20.

Economically, this person has been unproductive for two weeks and this affects farming. And malaria is so recurrent that in some cases one might be falling sick every month.

At the same time, someone else in the family will be sick, either a husband, wife, son or daughter. The children and pregnant women are hardest hit as malaria is often accompanied by complications such as anaemia, convulsions and some paralysis or even brain damage.

And there are other diseases.³⁰

The NIB is not involved in supporting community health. Treating of the fields does not take place. Nor is there any initiative by the NIB to assist farmers in fighting malaria. The only government effort is through the Kimbimbi Health Centre which is involved in treating mosquito nets. Farmers complain that while the NIB has provided clean drinking water to its staff, it ignored the farmers. The farmers have to draw their drinking water from the canals- water that has ben recycled through many farms and is contaminated. The contamination is worsened by the absence of toilets with in the fields. Yet farmers have to work

³⁰ Interview with Edward Nyaga, Clinical Officer in Charge, Kimbibi Health Centre, Mwea, September 15, 1999

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all day away from the communal villages where they live. This means the farmers have to relieve themselves in the open fields. Yet the NIB has been deducting money from farmers ostensibly for construction of toilets.

As an investor, the NIB has abdicated its social responsibility in environmental governance. If the NIB was a private company and exercised the same environmental irresponsibility, the Government would have invoked the law against it. That this has not happened against the NIB is a pointer to the Government's neglect of the Mwea farmers and connivance in their oppression.

Fuelwood is yet another of the problems within the rice Scheme. Farmers are not allowed to plant trees under the NIB regulations. As there is no alternative source of fuel, they either have to buy wood from the market, or use cow dung for cooking. In other cases they have to travel outside the Scheme to look for whatever fuelwood they can get. 'We sell our labour in exchange for dry maize stalks for cooking,' says Caterina Muthoni Ndimu.³⁰

Amidst this poverty, farmers have been paying for the recurrent expenditure of the NIB bureaucracy through deductions. In their estimate, their annual contribution to the NIB operational expenditure has been to the tune of Ksh. 127,827,480. Most of this money goes to the payment of salaries. In the year 1995/96 for instance there were 331 NIB employees in the Scheme, a ratio of 1:10 to the farmers. The expenditure on salaries for the year was 70% that of the farmers.³¹

The multiple violations of social economic rights, as discussed so far, have gone hand in hand with the violation of political and associational rights. Mwea, like everywhere else in Kenya, has suffered the brunt of the enforced silence of the days of single party politics. Then, any attempts to question a government officer would be suppressed with the full might of the state. Elected leaders who questioned any government policy would be expelled from the only legal political party, Kenya African National Union (KANU), their businesses destroyed and subjected to harassment of all kind.

Against this pall of enforced unanimity of political opinion, Mwea farmers have quietly carried on their struggles. They had no voice in the decision making process, although there is a provision for an Advisory Committee. In manoeuvres similar to those at the national political level, the NIB management would always manipulate the election of representatives to the Advisory Committee. One farmer points out:

³⁰ Interview with Caterina Muthoni Ndimu, Nguka village, Mwea, June 25, 1999

THE STRUGGLE FOR RIGHTS IN MWEA

We have had no representation- landlord NIB did not want the tenant (farmers) to know what work he did in his offices. About paddy prices, or government policies on the Scheme development. Tenants stayed in the darkness and that was all. There has been slavery here.

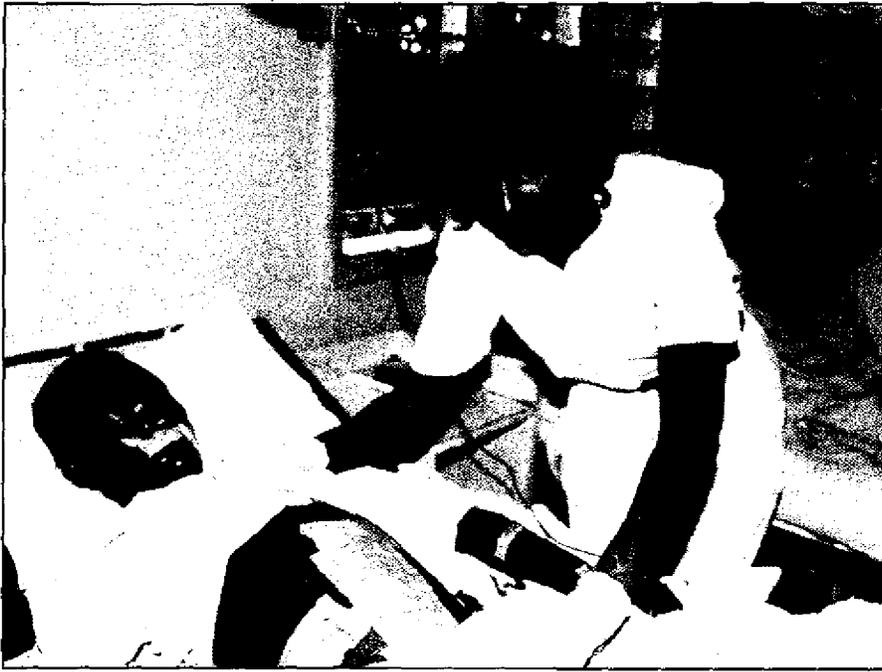
Our meeting with the Scheme manager was only to talk about roads, drains, feeders, fertilizers and paddy theft during harvest.³¹

³¹ Azariah Muriuki's statement, KHRC files

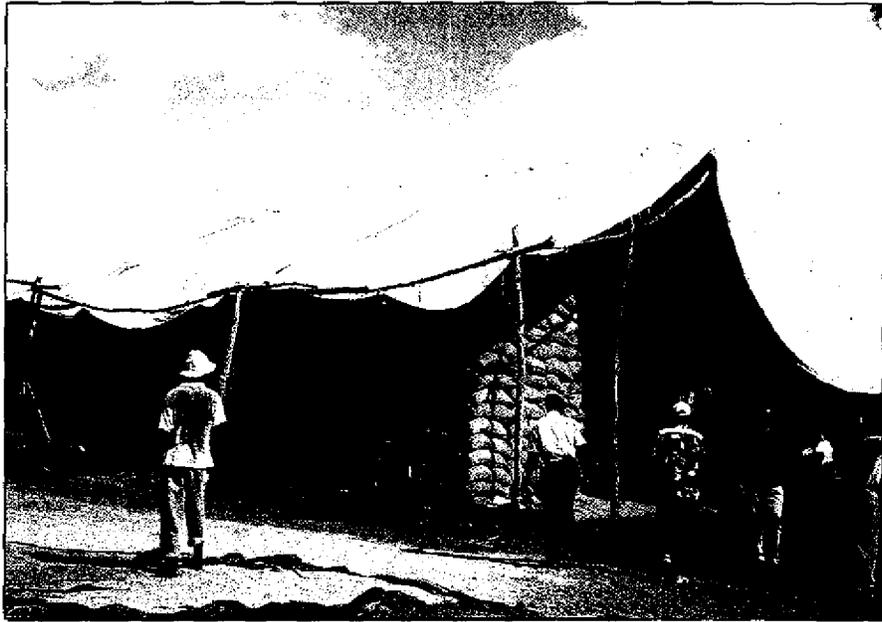


Ekng out a desperate existence in Niuea

DYING TO BE FREE



A victim of police violence in Mwea



The temporary rice shelters that Mwea farmers built

Ekling out a desperate existence in Mwea

CHAPTER THREE

Taking charge of their destiny

'We said, "God, we are even ready to die. But we will never go back to where we were."'

– *Caterina Muthoni Ndimu, Mwea farmer*

On January 12, 1999, Maina Karuiya 26 and Chege Mukundi 25 were shot to death by the police at Ngurubani market within the Mwea Rice Irrigation Scheme. The two were part of a 3,000 strong group of farmers who were demonstrating against exploitation by the National Irrigation Board.

History was repeating itself all over again. Grandchildren and great grandchildren were paying with their lives and blood for land in the same way their ancestors had done under colonialism.

Significant as it is in the struggles of the Mwea people, January 12, 1999, is not however, the beginning of their struggles against the oppressive rules of the National Irrigation Board and its predecessors. There have been many unrecorded battles. Less known but equally significant battles for existence and the freedom to earn a dignified livelihood.

Benson Karimi is the Treasurer of the Mwea Rice Growers Multipurpose Society that has now taken over the running of the rice Scheme after farmers rejected the NIB. He has been part of the struggles of the Mwea farmers both as a farmer and also as a member of the Society's management for many years. He traces the many attempts at reforming the management of the scheme:

We have lived with the NIB just like the way a donkey is accompanied by its young one while transporting goods. After the young one grows up, it also starts carrying loads.

We have laws that are very oppressive. After you harvest all the rice you must hand it over to the NIB. And then you are not allowed to keep cattle or even chicken without the authority of the manager. Once a child reaches 18, they should leave the scheme. The law does not allow women to own the land. Even after the husband dies the land has to pass over to the eldest son and not the

daughters. This has been creating conflicts between sons and their mothers. Also when one grows old you are supposed to leave the Scheme. We did not know whether it was a job or slavery.

True, the farmers all along have seen the oppression but since they had just emerged from colonialism, and most of those who had been sent were ex-detainees, life was better than in the prison. Coupled with this, after detention, they found that land had already been demarcated in their home areas and they were landless.

I remember way back in 1984 we had gone on strike. I was then a member of the Mwea Farmers Co-operative Society Management Committee. It was then known as the Mwea Farmers Co-operative Society. Farmers went on strike over the price. They were also demanding to know the purchase prices of inputs. We barred the NIB from ploughing the land. The then Central Province Provincial Commissioner, David Musila came with the police and threatened to confiscate our farms if we did not end the strike. About 25 of us lost our farms over that strike. The PC ordered anyone who did not want the NIB to plough the land to leave the scheme. I am one of those whose licenses were terminated for being political. I was terminated because we were fighting for our rights. But since the then Member of Parliament Kibugi Kabugi had dominated the area like a personal kingdom, we had nothing to do.

So the Board decided to start strangling the Society. They engineered our sacking from the Management Committee of the Society. In those days, the NIB manager would campaign for whoever they wanted to be the leader in the farmers' society. These elections were never an expression of the will of the people.



Benson Karim

If one spoke out against the oppression, one was seen as political, and their situation was made very bad. They would confiscate your farm and chase you away. The license would be terminated. Many were chased away. This only stopped in March 1999 after we met the Minister for Agriculture, Musalia Mudavadi. He ordered that license termination be stopped. The Minister also confirmed that we were not tenants but farmers.

For a long time all the leaders we have been electing have been very selfish. They were stifling any leadership that would be a threat to them. Also, the NIB never wanted us to get out of darkness.

For instance, our canal system has a main feeder and a minor feeder. The NIB would clean the main feeder while the minor feeder would be cleaned by farmers. Yet the NIB would still deduct money from us for the cleaning of the canal.

The deductions were called water rates. We protested against this. In 1984 whereupon they changed the name and called the deductions service charge. Water rates used to be Ksh. 200 per acre. While on a tour of Mwea in 1984, President Daniel arap Moi questioned why farmers had to pay for the water which was flowing freely. That is when the NIB changed the name again and started calling the deductions service charge. These service charges contained water rates, road maintenance fee and structures maintenance fees. When we still complained, they changed the name again to Road, Canal, Structures.

In 1990, they raised the charges to Ksh. 1,600 per acre.

Before 1992, there was very little money reacting the farmer. However, there were fewer instances of termination of tenancies. People were not being chased away so often. After 1992, however, the President came and said that those who chose to remain in the cold should remain there. That is when the termination started with earnest. Many people were terminated. Farmers had then started campaigning for an increase of bags for domestic use from 12 to 20. The Board refused.

There was an Advisory Committee elected by the farmers to the NIB management. This AC was a rubber stamp of the NIB. The NIB had ways of influencing those elected even to the management of the farmers' Society.

In 1993, however, we elected our choices to the Society's Management Committee and this is the time the struggle over the price of rice gathered momentum. I was one of those elected to the Management Committee. The NIB was buying a kilo of rice in 1993 at Ksh. 5.50. I started educating farmers over their rights. We made our calculations and discovered that there was a lot of money in the rice farming. We started preparing our own accounts to compare them with those of the NIB. The NIB started working against us. They started telling farmers that we were anti-government and that they should sack us from the MC.

We were buying broken rice from the Mwea Rice Mills to sell to the farmers for food. Farmers had no money to buy the good rice and were eating broken rice. We were buying a sack at Ksh. 600 and selling to farmers at Ksh. 630. The farmers would then sell at Ksh. 700 or Ksh. 800. But the then District Commissioner (DC) Francis Siger and the Division Officer (DO) interfered as they wanted to run the business. Instead of this rice reaching the farmers, the DC and the DO and the NIB managers went into the business.

This broken rice was worth about Ksh. 1.5m per month. So I wrote to the Provincial Co-operative Officer. I asked them to come and conduct a probe. When they came, they discovered that the farmers had lost Ksh. 1.5m. However, instead of taking action they came to arrest us. They had colluded with the then Society's chair Mbugua Gachui to defraud farmers. But because I had mentioned the DC and the DO, they arrested the eight of us at night.

We were taken to the DO's office. They said that we were planning to overthrow the Government of Kenya. When the then KANU chair, Kibugi Kaifugi learnt

that we had been arrested, he called the DC who in turn called the DO. The DO denied that we had been arrested. We were taken out of the office and hidden within the compound. The Administration Police officers threatened to shoot us if we attempted to run.

When I asked the DO why they had arrested us instead of taking action on the fraud, he stood up and boxed me. We were then released and warned not to disclose that we had been arrested or we would be killed.

The DO then held a meeting with the farmers and told them that we had stolen the Society's money. We were voted out.³²

Recalling the strike in 1984, Gaitho Kang'aara explains that farmers calculated and found that they would be left with nothing after deductions of service charges. That is when they went on strike and for one year did not grow rice, *'Twariaga witikio. Twariaga witikio wa Ngai.'* (We lived on faith. We lived on our faith in God), says Kang'aara³³

Although farmers had been agitating for their rights for a long time, there is a consensus that it was not until after the 1997 elections that they managed to elect a Member of Parliament on a platform of change. The MP, Alfred Nderitu, was elected on an opposition Democratic Party ticket. Farmers express frustration at the collusion of their previous MPs with the government at their expense.



Gaitho Kang'aara

Mwea has had six MPs. The first was Romano Gikunju. Then came Lukas Ngure who farmers argue was instrumental in convincing them to accept deductions in 1972 for the building of the Embu-Nairobi road for which they pay for to date. He was followed by Kiragu Stephen and then Kibugi Kathigi. In 1992, Bishop Allan Njeru was elected on an opposition ticket and was the MP until 1997 when Alfred Nderitu was elected.

Before Nderitu, farmers say, the other MPs never fought for their rights. They accuse Kibugi Kathigi specifically of having been involved in corruption while Bishop Allan Njeru was instrumental in having them sign to accept the continued presence of the NIB in 1997. Says Joseph Gachanga, 'The NIB officers came round telling us that if we did not sign the new agreement, they would not

³² Interview with Benson Karimi, Ngurubani, Mwea, September 21, 1999

³³ Interview with Gaitho Kang'aara, Nguka Village, Mwea, June 3, 1999

plough our farms. We were all afraid that we would be in problems. Our then MP Bishop Allan Njeru, convinced us that there was nothing sinister about it. He led us into signing. Only later did we discover that we were being duped.³⁴

The high noon of defiance

'Farmers have now decided they will grow and market their rice. And if possible, we would like the NIB to go into the fields and do the production and we do the marketing. We change roles.'

— John Njoroge, Mwea rice farmer

On March 18, 1998 a meeting between the Farmers Advisory Committee and the NIB was held to discuss and resolve the issues of rice marketing. This meeting did not resolve the issue as the NIB was not willing to pay the Ksh.25 per kilogramme of rice paddy that the farmers were demanding. The NIB was paying Ksh. 18 per kilogramme.

Following this disagreement, farmers held a demonstration against the NIB demanding its withdrawal from running affairs of the Scheme and that they be issued with title deeds rather than leases. In September, the manager announced that 850 farmers who had failed to meet the set targets of rice production would not benefit from the NIB's tractor service. Farmers strongly objected to this. The farmers started making plans on how the Mwea Multi-purpose Society could purchase tractors. Following this move by the NIB farmers pulled out of the talks.

In November, the farmers resolved to stop marketing their rice through the NIB. From then on, they opted to sell their rice through the Society. In December, the disagreement between the farmers and the NIB turned violent. On December 8, four people were arrested by the police and the NIB seized a motor vehicle belonging to the Society. This was followed by confrontation between the police and the farmers leaving four people seriously injured and a NIB tractor burnt to a shell.

At the same time, the battle was going on in the courts. The farmers managed to obtain an injunction restraining the NIB from seizing harvested rice and from evicting them from the Scheme. The NIB also managed to obtain an injunction restraining the Society from collecting and marketing farmers rice until the suit between the two parties was heard. The order was however ignored by the farmers.

Their attempts to use the NIB stores for their rice were fruitless. As a result,

³⁴ Interview with Joseph Gachanga, Nguka Village, Mwea, June 25, 1999

farmers were forced to move their rice to temporary shelters at their Society offices. The confrontation heightened when on January 7 a NIB lorry was set ablaze. In January 1999, the attempts to resolve the stalemate by the Ministry of Agriculture failed. A tour of the rice Scheme on January 11 by the Permanent Secretary Mr Philemon Mwaisaka was met with hostility by the farmers.

On January 12, 1999, over 3,000 farmers held a major protest at Ngurubani Market. The meeting discussed the farmers demands. That day, farmers had also threatened to take over the rice mills. However, after addressing the farmers, the area MP Alfred Nderitu requested them to disperse peacefully. As the farmers were dispersing, a group of rowdy youths within the crowd started throwing stones at the police. The confrontation turned bloody when the police responded. They shot in the air to disperse the crowd and as the farmers were running, they shot at them.

On that day, two young people, Maina Karuiya, 26, and Chege Mukundi, 25, were shot dead while Jackson Ndege and Nelson Kinyua were shot and seriously injured. The area MP Alfred Nderitu was a particular target as the government had been accusing him of inciting the farmers. The MP explains:

The police had blocked all the roads. The youths were throwing stones at the police and I pleaded with the Officer Commanding Police Division (OCPD) to tell his men to remain calm. A landrover full of Administration Police came and they started shooting. They were aiming at me. One of the young men who died grabbed me and pulled me to the ground. He got the bullet. We ran to the farmers' Savings and Credit Cooperative Society offices but the police followed us and tear-gassed us. I managed to leave the scene and went home.

Later that evening, the General Service Unit police in a convoy of vehicles, lorries and Land Rovers were sent to my house. They arrested me and took me to the police station. They started wondering aloud what to charge me with. They charged me with incitement and bonded me.³⁵

Benson Karimi, the Treasurer of the Mwca Rice Growers' Multi-purpose Society was another of those targeted by the government for his agitation on farmers' behalf. He narrates the event of that day:

When the violence broke out in January the Government had marked me out for elimination. That day a police officer in plainclothes had been trailing me all morning. I kept trying to shake him off but he kept following me. The PS, Philemon Mwaisaka had previously sworn that the police would shoot us. That day we had a meeting that was addressed by the MP. The DO had come with his APs and three lorries full of General Service Unit officers. When gun shots

³⁵ Interview with Mwea MP, Alfred Nderitu, Mwea, June 3, 1999

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rang out, I rushed to see what was happening. Just then, I saw the plainclothes officer taking out a pistol. He aimed at me and I ducked. The bullet hit a wall. One of the construction workers atop a building hit him with a rock and the second shot went wide. I ran but another of the officers shot me. I was hit by a rubber bullet. I fell down and some people dragged me and covered me with their bodies. The same plainclothes officer who had been following me came over with his pistol fully drawn but he could not see me as some women were sitting on me.

After he had passed, I started walking. My leg was all swollen. I met one police officer who expressed surprise that I was still alive yet I was a most wanted person. He told me to enter a shop that was open and hide. I later went and rented a room in a boarding house with the help of one of the Committee members. After a short while, I went out to answer a call of nature. While I was in the toilet, two police officers came knocking at the boarding house. I heard them asking which room I was in. The owner told them I had left. They then said aloud that I would die that day.

I however, managed to sneak out and boarded a pick-up truck that was transporting tomatoes. That is how I fled from Ngurubani.³⁶

There was no turning back as farmers took over the running of the Ksh.1 billion a year enterprise. The farmers had made up their minds they had had enough. The insensitivity of the NIB to their plight strengthened their resolve.

We kept asking ourselves, what is all this? What are they doing to us? We started getting angry. We started getting united. God sent us a leader who is selfless. So when he called us, we all spoke in one voice. People cannot fight these kind of battles unless they are united.³⁷

Unity of purpose is what the farmers cite as their main strength, plus the fearless leadership of their MP Alfred Nderitu. Everywhere they liken their struggle and the leadership of their MP to the Biblical suffering of Israelites and the leadership of Moses:

This MP has been sent by God. He has been sent to us the way Moses was sent by God and told, 'I have heard the cries of these children.' He is our child. He is like Moses who refused the luxury of Egypt. We all pray to God and say, 'God, do what you did at the time of the Emergency. God, if we are defeated, you are the one who has been defeated, if we win, you are the winner.'

Like the children of Israel who spent 40 years in the wilderness, our time has come. We have spent 42 years here. And God has decided to change this. We are united. So we cannot be defeated.³⁸

³⁶ Interview with Benson Karimi, Ngurubani, Mwea, September 21, 1999

³⁷ Interview with Joseph Gachanga, Nguka Village, Mwea, June 25, 1999

³⁸ Interview with Gaitho Kang'aara, Nguka Village, Mwea, June 3, 1999

Besides the MP and other leaders, there are many other individuals who have been involved in organizing this communal effort. Many of them young people who have been brought under the yoke that has been the NIB. These young people have grown up seeing their parents toiling on the muddy fields every day to their graves and not making enough from their yields to put a meal into their plates. These, are the ones who symbolize the determination and the future of the Mwea community. One such young man is John Njoroge, now charged with the security responsibility over the Mwea Multi-purpose Society's stores:

I was born in 1966, the first born child in a family of nine. We were very poor and to even get a packet of maize flour was very difficult. There was never enough food to eat. I started noticing these problems in the 1970s. I saw my mother struggle to feed us. She would go and work in people's fields to earn some money for food. That meant she neglected the rice field.

We were in school and my mother and father struggled to keep us in school. We would go to school hungry many times. I remember even when there was food, cooking was always a problem. There was no fuel and we would collect cow dung for use.

We could not concentrate in school as we were always hungry. Not because my parents did not have a farm. They tried but it was impossible. I dropped out of school at standard six and started working. People would hire me to drive their donkeys.

Life was too difficult and around 1983, I went to Mombasa, where I was hired to look after goats. I came back, in 1987, to find that my mother had died in 1986. I never knew. Our family had disintegrated. My siblings were living in different places, with aunts, uncles and cousins. I struggle to reorganize them into a family again.

The NIB had already confiscated our farm. I convinced the NIB to give it back to me. I set to work on the farm. In the first year we harvested 80 bags. We kept 10 and delivered 70 to the NIB. My late mother had incurred a debt of Ksh. 100,000 with the NIB. The NIB deducted all the money at once. I had no money with which to prepare the land for the next planting.

All this time I was struggling single-handedly to take care of my siblings. Our father had abandoned us. The NIB was not willing to listen. We struggled on.

In 1989 I was involved in a road accident and spent a month in hospital. That year we sold only 40 bags to the NIB. The rest went into paying hospital bills. I was delivering almost all the rice to ensure we did not lose the land.

I remember my brothers or sisters would fall sick and I would go crying to the NIB. They would not listen to me. I could not even afford a pair of shoes. I thought to myself, this is colonialism.

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In 1996, I gave up on the rice and decided to try my hand in other jobs. My brother started taking care of the farm. I started painting houses and glass fitting for a fee. The NIB tried to confiscate the farm.

In September 1998, together with other farmers and our MP, we started a campaign to buy rice through the Society. The NIB sent armed Administration Police officers to stop us. In December, we chased away the APs. A group of us young people started soliciting for rice on behalf of the Society. This was in December.

One day, one of the farmers told us to pick up his rice which was lying at the NIB stores. When we went there, we were locked up. The DO came and told us we were free to buy rice from the farms but we could not pick up what had already been delivered to the NIB. So we unloaded the rice. We were however arrested all the same.

We were charged with theft of 60 sacks of rice. The case is still pending.

The NIB does not care about farmers. Even if a farmer collapses, an NIB vehicle is passing by, it will never stop to take the farmer to hospital. Even if a farmer dies and the body is in the mortuary, the NIB will never avail a vehicle to transport the body.

Growing rice is a hard job. The NIB comes only when we have harvested. When rice reaches the NIB, they say that farmers cannot do the milling. And now that the farmers have decided to sell the rice themselves, the NIB is saying that the rice is unfit for human consumption. That it has nails and stones. Yet it is the very same rice.³⁹

While the drama of the Mwea farmers' struggle as they re-enact it themselves appears to revolve around their relationship with the NIB, poverty and daily survival, its complexity and diversity of actors reveals the interconnectedness of governance and economic concerns. As farmers point out, the NIB has had no room for farmers involvement in the decision making over their own rice and their own fate. The Provincial Administration, a throwback from the colonial days has been the instrument of control in the same manner as it was under colonialism.

Standing up to demand a fair price for their produce became a 'treasonable' offence in the eyes of the government. Farmers were arrested time and again for demanding their due compensation. When farmers held a peaceful demonstration, they were beaten and two of them shot dead. The farmers struggle is a complete picture of denial and violation of a series of various rights, from associational to economic, environmental and political.

³⁹ Interview with John Njoroge, Ngurubani, Mwea, September 15, 1999

Integrating survival and political participation

'General conceptual analysis of human rights (and the legal interpretations partly attendant on such analysis) should be approached with sustained attention to the underlying humanity of human rights and to the reality that human experience rarely confines itself to neat categories, much less to highly abstract ones.'

— Craig Scott, "*Reaching Beyond (Without Abandoning) the Category of Economic, Social and Cultural Rights*"⁴⁰

The Mwea experience is to be understood within the framework of the global quest for human rights and democratisation. More than any other time the decade at the close of the twentieth century is a time for the internationalisation of human right rhetoric and universalisation of certain human values. Everywhere government, corporations and other groups are stressing their commitment to these principles. More and more governments are dismantling the structures of monolithism and allowing for greater openness, accountability and political freedom. In spite of a few setbacks here and there, traditionally despotic regimes are queuing to pay homage to the twin shrines of democracy and human rights.

Unfortunately however, this victory in the expansion of freedom and democracy threatens to obscure the rebuking absence of socio-economic rights from the celebration of the 'age of rights'. A non-integrationist thinking rooted in the ideological polarisations of the Cold War era has continued to dog the human rights discourse at best equating human rights to civil and political rights and at worst ranking socio-economic rights lower in the human rights pantheon.

Specifically, the dichotomisation of human rights into civil/political and economic/social and cultural rights has created a false ranking that has been reinforced by the dominant liberal perspective of rights.

⁴⁰ Craig Scott, "Reaching Beyond (Without Abandoning) the Category of 'Economic, Social and Cultural Rights,'" *Human Rights Quarterly*, (Vol. 21, 1999), p. 636

In 1993, in Vienna, human rights activists, scholars and political leaders came together for a reflection on the state of human rights. At the conference, the equal importance of all rights was stressed by the community of nations. Concerns such as development were highlighted by the Vienna Declaration's stress on the 'mutually reinforcing interrelationship between development, democracy and human rights'.

Various activists and scholars within the human rights movement are now calling for a shift away from the traditional construction of human rights as primarily denoting civil and political rights. A movement from the 'statist' position that rights are only enforceable against the state. This interpretation of human rights law has failed to confront and address such concerns as domestic violence, exploitation of farmers by marketing authorities and actions of multinational corporations and International Finance Corporations as human rights violations.

The Universal Declaration of Human Rights (UDHR) which is the philosophical foundation for human rights law envisages a regime of rights that does not dichotomize the ESC from the civil and political rights. Such ESC rights such as 'right to social security', 'right to a standard of living adequate to health', 'right to work' are listed in the Declaration side by side with such rights as the 'right to freedom of movement', 'right to life, liberty and the security of the person'. It is in this Declaration that the earliest justifications and foundations of all rights are to be found. In its preamble, the UDHR talks of the 'recognition of the inherent dignity ... of all members of the human family'. This reference to dignity offers a powerful argument for the protection, respect and promotion of ESC rights. Human dignity is not possible without the respect of such rights as work, social security, health and education.

In its preamble, the ICESCR makes note of the UDHR observing that, 'in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights.'

The ESC rights are part of what is called the International Bill of Human Rights namely, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. Although there has been reservations on ESC rights, more countries have actually ratified the ICESCR than the IC-CPR. The objection to ESC rights is actually less than the claims. Indeed of

those countries that have ratified the ICCPR only two – the United States and Haiti – have failed to ratify the ICESCR.⁴¹

Besides the International Bill, regional treaties have also recognised and integrated ESC rights. The African Charter on Human and Peoples Rights has integrated all the rights and declares in its preamble that ‘... it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.’ They are contained in the European Social Charter, in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. And as Asbjorn Eide and Allan Rosas point out, more recent global instruments, such as the Convention on the Rights of the Child have re-integrated ESC and civil and political rights in one common text.⁴²

This re-thinking of human rights has been taking place within Kenya too. Willy Mutunga and Alamin Mazrui have argued that reconceptualisation of the human rights corpus is of critical urgency especially in exploited societies. Much as the liberal construction of politics contains within it positive and transformative characteristics,⁴³ Mutunga and Mazrui argue, the human rights movement must adopt a theoretical terrain that attacks ‘conceptions of property within the capitalist idiom and address issues of substantive justice that fundamentally affect the way wealth and other resources are redistributed’.⁴⁴ This strategy must also establish the link between human rights violations and the international economic system.⁴⁵

This reflection has been occasioned by a quest for legitimacy by the human rights movement and a recognition that human rights cannot be grafted upon the society but must be a natural grain within the woodwork of the society. It is

⁴¹ Asbjorn Eide, ‘Economic, Social and Cultural Rights as Human Rights’ in *Economic, Social and Cultural Rights*, (Asbjorn Eide, Catarina Krause and Allan Rosas, eds.) Kluwer Academic Publishers, The Netherlands, 1995

⁴² Asbjorn Eide and Allan Rosas, ‘Economic, Social and Cultural Rights: A Universal Challenge’ in *Economic, Social and Cultural Rights*, (Asbjorn Eide, Catarina Krause and Allan Rosas, eds.), Kluwer Academic Publishers, The Netherlands, 1995

⁴³ Willy Mutunga and Alamin Mazrui, ‘The Integration of All Human Rights: A Case Study of Kenya Human Rights Commission,’ (Unpublished paper, 1999), p. 5. See also generally, Issa Shivji, *The Concept of Human Rights in Africa*, (Dakar, Codesria Book Series, 1989).

⁴⁴ Mutunga and Mazrui, (1999), p. 6

⁴⁵ Ibid.

a recognition, in the words of Makau wa Mutua that, 'To be relevant and to gain legitimacy in the continent, the human rights movement in Africa must address the entire gamut of rights, both the civil and political and the economic and the social rights. It should not focus on the political and procedural troubles of a few elites in the capital cities or the urban areas.'⁴⁶

In its March 1998 Annual General Meeting, NGO Council kicked off a campaign to popularise 'Basic Needs as Basic Rights'. Various groups specifically the International Commission of Jurists (Kenya), Kenya Pastoralists Forum (KPF), Shelter Forum, Kenya Aids NGOs Consortium, the NGO Council, ActionAid Kenya, 4Cs, Network for Water and Sanitation International (NETWAS) and later KHRC launched the Basic Rights Charter.

The 'Basic Needs as Basic Rights' movement has been significant in bringing down the conceptual wall between development work and human rights work. It has lent the human rights language to what has previously been dismissed as purely 'economic and social concerns'.⁴⁷

This reflection has been occasioned by experiences of peoples within Kenya and elsewhere. Analysing poverty and deprivation in Mwea from a merely economic dimension will result in half the picture. From purely production dimensions Mwea farmers ought not to be poor. After all Mwea is the most profitable of the irrigation schemes in Kenya accounting for 80% of rice production.

Rather, the totality of the poverty in Mwea can only be understood within its political-economic context. Mwea represents a continuation of denial of participation harking back to colonialism. Mwea was an imposition by the colonial administration as part of its political subjugation strategies. What was developed was the physical infrastructure for rice production and not the physical infrastructure necessary for democratic management.

In Mwea, the government did not move to legitimise the Scheme after independence. Policy formulation has continued to be top-down.⁴⁸ The style of

⁴⁶ Makau wa Mutua, 'The Legitimacy of Human Rights NGOs in Africa' in *The Legal Profession and the Protection of Human Rights in Africa*, Africa Legal Aid, 1999.

⁴⁷ Aryeh Neier, former executive director of Human Rights Watch has articulated this position:

When it comes to the question of what are called economic rights, I'm on the side of the spectrum which feels that the attempt to describe economic concerns as rights is misguided.

Aryeh Neier, remarks to East Asian Legal Studies and Human Rights Program Symposium (Harvard Law School) (May 8, 1993), in *Human Rights and Foreign Policy: A Symposium* 16 (1994), quoted in Makau wa Mutua, 'The Ideology of Human Rights', *Virginia Journal of International Law*, Vol. 36, No. 3, 1996, p. 618

policy implementation has also excluded farmers in all significant issues. Yet part of a citizen's contract with the state is that she/he has a say in the affairs of governance. In Mwea, this say has been denied at the local level.

Mwea farmers are a major contributor to the government revenue through taxes and through the various deductions from farmers. Yet there is no policy of ploughing back any of the resources through development of social infrastructure. Mwea is an example of taxation without any attempt at delivery of services.

The Mwea Scheme is a representation of economic management using political logic. Here any effort to challenge the process of impoverishment is an attack on the political bureaucracy in charge. Fighting for economic betterment therefore has meant fighting to dismantle the political and administrative structure in charge.

The Mwea experience is a lesson that while in academic discourse the divisions between the various rights might be conceivable, in the practical reality where human rights violations occur there exists no such dichotomy. The enjoyment of one right is predicated upon the respect for the other. Where the right to speak is imperilled and the hungry cannot ask for food, it is not only the right to speak that is endangered. It is also the life itself as no one will know the hungry have no food.

⁴⁸ See also, generally, Patrick O. Alila, 'Grassroots Participation in small and Large Scale Irrigation Agriculture: The Kenyan Experience' in *Irrigation Policy in Kenya and Zimbabwe*, Ruigu, George, M., and Rukuni, Mandivamba (eds), (Nairobi: Institute of Development Studies), 1987 p. 82

CHAPTER FIVE

The unfinished business

'It is not blasphemy if we claim the ownership of this land, in this settlement, for we purchased it by our blood and the work of our hands. It is also our inheritance.'

— *Mzee Azariah Muriuki, Mwea farmer*

Mwea farmers have made what they swear is an irreversible break with the NIB. However their battle with the NIB is far from over. One of the sticking points is the fate of the Mwea Rice Mills.

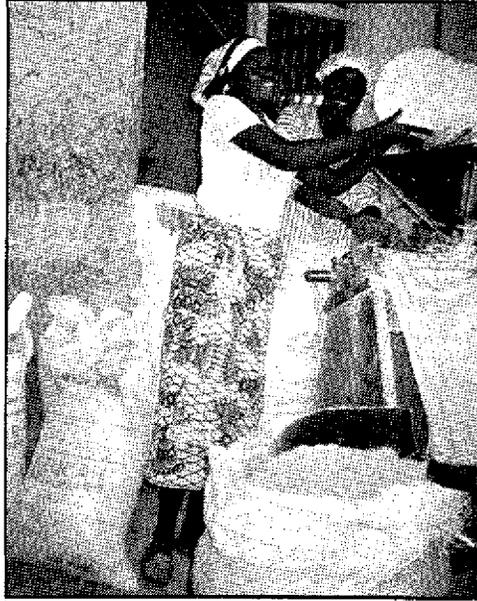
The Mwea Rice Mills Limited was started as a joint enterprise between the Mwea farmers and National Irrigation Board. The initial capital investment was Ksh.5 million, split between the farmers and the NIB at the ratio of Ksh. 2 million to Ksh.3 million respectively. The farmers raised the Ksh. 2 million through the sale of 100,000 shares at Ksh. 20 each. The allotment of capital ratio was by agreement between the Mwea Farmers Co-operative Society and the National Irrigation Board dated February 28, 1967. The NIB was to hold 60% of the shares while the Society was to hold 40%. In 1992, the NIB sold 5% of its shareholding to farmers, thus bringing the share ratio to 55:45. The farmers' share equity of 45% accounts for 4.5 million. Owing to its shareholding, the NIB has always had control of the management of the Mwea Rice Mills.⁴⁹

Unlike the farmers, the NIB did not directly inject any capital into the building of the Rice Mills. The Ksh. 3 million share was in the form of technical and professional input.

Farmers complain that for five years, they have not received any dividends from the Mills. In January they attempted to take over the Mills as well as the NIB stores. They were stopped by the police. Now farmers are making do with small single pass rice hullers. These cannot separate the broken rice from the whole, which makes the rice less competitive in the market. The society has 40 of these hullers.

⁴⁹ Memorandum and Articles of Association of Mwea Rice Mill Limited, KHRC files

Farmers have also temporarily abandoned the tug of war over the NIB stores. Instead they have moved their 1998 harvest into temporary shelters at the Mwea Growers Multi purpose Co-operative Society premises. The temporary shelters have cost them Ksh.7 million.⁵⁰



Hulling the 1998 crop: Ownership of the Mills still disputed

Although the NIB seems to have given up the fight, farmers have no title deeds yet. They have nothing other than the allotment letters to support their claim of ownership of the land they occupy. The NIB remains the registered owner.

The battle over the 1998 harvest has already been taken to the courts where the NIB has been trying to compel farmers to hand over the rice.⁵¹ Farmers are not ready to budge court orders or no orders:

The NIB has no right of ownership of the land and the rice. These belong to the Mwea farmers. The NIB can only claim the money it spent on the production of the rice. Farmers want the NIB to let them sell their rice and pay the debts. Farmers do not see the reason for these wars although some of their colleagues have been shot dead. We do not see which law in this country allows for our rice to be snatched from us through court orders. This is absolutely unfair.⁵²

Having lost the battle over the rice, the farmers say the government has now moved to try and cripple the operations of the Mwea Growers Multipurpose Society. So far, the society has acquired 40 tractors that are involved in preparing the fields for the farmers.

Due to the high capital costs they have incurred, the Society requires credit facilities but commercial banks will not lend them money, says Benson Karimi, the Society's treasurer:

⁵⁰ Interview with Mwea MP, Alfred Nderitu, Ngurubani, Mwea, June 3, 1999

⁵¹ *NIB vs Mwea Rice Growers Multi-purpose Co-op Society and five others*, civil case no. 2760 of 1998, High Court of Kenya, Nairobi

⁵² Azariah Muriuki's statement, KHRC files

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They cite the pending court case arguing that the ownership of the rice is in dispute. The government has blocked us and we cannot get loans from banks. We have to struggle with no funds.

I want you to let the whole world know how we are being oppressed. We are being oppressed yet we are human beings. We do not beg. We do not steal. We sweat.

We are selling our rice at a throw away price because the government has refused to hand over our rice mill. We are selling our rice at Ksh.54 shillings per kilogramme. The NIB used to sell at Ksh.62 shillings. Now we are saying we are selling gold. Where was the money going?⁵³

⁵³ Interview with Benson Karimi, Ngurubani, Mwea, September 25, 1999

CHAPTER SIX

Conclusion and Recommendations

Mwea is a statement that in those small places that Eleanor Roosevelt spoke of, the people have been ahead of the scholars and other actors in the human rights movement. The 1993 Vienna Conference is but an affirmation that the human rights movement should have never attempted to split human rights into categories. The plight of communities such as Mwea is an expression that human rights violations do not follow the dichotomies of civil/political and socio/economic.

The experience of the Mwea people illustrates the interconnectedness of all rights and how the denial of one right leads and re-inforces the violation of the other. The Mwea farmers have lived under conditions that clearly violate the International Covenant on Economic Social and Cultural Rights. Article 7 (a) ii of the Covenant recognises the right to remuneration which provides all workers with 'a decent living for themselves and their families'. Equally, article 25 of the Universal Declaration of Human Rights states that 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...'

The impoverisation of the Mwea farmers through economic and political policies that deny them a just compensation for their proceeds is a denial of a decent living.

Under section (b) of the same article, 'safe and healthy working conditions' is a right. In Mwea, clean water is unavailable and farmers have to draw water from the irrigation canals. There are no toilet facilities, although work usually takes place in the fields far away from the communal compounds where the farmers live.

The violent crackdown by the police when the farmers rose to protest their conditions was a clear violation of an array of rights guaranteed under the

International Bill of Human Rights. The International Covenant on Civil and Political Rights recognises the right of all persons to assemble peacefully and express their opinions without interference (Articles 19 and 21). These rights are also affirmed by the Universal Declaration of Human Rights.

Mwea represents the horror of a planned economic deprivation of citizens by their own government. It is a symbol of the continued dominance of the colonial ideology of power in post-colonial Kenya. It was not just that the farmers did not get a fair price for their crop but that the same crops have to be produced under conditions of squalor, and taken away by the force of the gun and the threat of the law. The pre-eminent role of the Provincial Administration the most recognisable face of decentralised despotism of colonial days in buttressing the oppression of the Mwea rice farmers is a matter of record.

In Mwea, the NIB, the Provincial Administration, the courts and the representatives of other government organs all merge into a single face of imposed poverty. It is the Provincial Administration police officer who ensures that farmers deliver all their harvest to the NIB, as per the Irrigation Act. An Act enacted by a post-independence Parliament and enforced by a post-independence government.

Recommendations

KHRC makes the following recommendations:

To human rights organisations

1. Whereas there is a compelling need for close scrutiny and eternal vigilance by human rights groups on the condition of civil and political rights, there exists an equally critical need to monitor, document and expose violations of socio-economic nature as an integral aspect of human rights.
2. In its monitoring of human rights violations, the human rights movement must strive to see the integrated picture and establish linkages between the violations of socio-economic rights and civil and political rights and vice versa.

3. Lessons must be drawn from popular struggles on the integrated nature of violations and the corresponding responses.

To the Kenya Government

1. The serfdom in Mwea and in other similar areas has for a long time been legitimized by laws that are in conflict with the notion of individual liberty. These laws and in particular, the Irrigation Act (Cap. 347, Laws of Kenya), should be repealed as part of the process of dismantling the agrarian dictatorship and its paternalism.
2. The violence, the killings and the torture of innocent farmers in Mwea should be immediately investigated, the culprits punished and compensation made to all those who suffered from police excesses.
3. The government must recognize the sanctity of peaceful dissent and should refrain from criminalizing this as it did with Mwea rice farmers.
4. The government as the sole agency with the legitimacy of governing has duties and responsibilities to its citizens. The Mwea farmers are a lucrative source of revenue for the government but have received no benefits in the form of services. These must be provided to prevent the absolute erosion of the government's legitimacy.
5. The right to have a voice in government means the right to participate in the central government as well as in local governance structures like the NIB.
6. Government regulatory powers should be exercised even-handedly and should include those institutions under government control like the NIB.
7. Mwea farmers should be allowed to manage rice production in holdings and should be issued with title deeds.
8. The administration should be de-linked from economic management and should not be involved in the production relations as it has been in Mwea.

APPENDIX I

The African Councils Ordinance, 1950 [African District Council of Embu (Mwea) By-laws, 1960]	The Irrigation Act Cap 347, Laws of Kenya [Irrigation (National Irrigation Schemes) Regulations]
<p>Jurisdiction</p> <ul style="list-style-type: none"> In effect in Mwea Irrigation Scheme only <p>Authority</p> <ul style="list-style-type: none"> Effected through the local government as embodied by the Chair of the African District Council of Embu (The Authority). 	<ul style="list-style-type: none"> In effect in Mwea, Perkerra Irrigation Area in Baringo District, Galole Special Settlement Area in Tana River District and Ahero National Irrigation Plot Scheme in Kisumu District. Directly administered by a manager who is an appointee of the Minister of Agriculture.
<p>The Licensee</p> <ul style="list-style-type: none"> Provides for the licensee to be a man (by providing that the licensee should be the son of without a similar provision for the daughter of) The Authority with powers to termination of the license where the licensee has failed to show cause why his license should not be terminated after his breach of it. This can be appealed to the Provincial Commissioner who has the final word on termination in these cases. A licensee whose license has been terminated is entitled to written notice of termination as well as compensation for crops that cannot be harvested and for buildings and improvements on the land A license is also terminated if there is no person is found to act on behalf of an under-age successor and assume the rights and liabilities under the By-laws. The authority can terminate a license by giving at least six months notice of his intention to do so and in this case pay compensation for buildings and improvements any crops planted before the notice was given and which could not be harvested due to this termination. 	<ul style="list-style-type: none"> Same Expands the bracket of 'other stock' to include 'domestic animals'. <p>A licensee is terminated if:</p> <ul style="list-style-type: none"> no acceptable successor is appointed, nominated or found as required by the Regulations a licensee fails to comply with the obligations imposed on him by the license. This termination is by the Minister on the recommendation of the manager after confirmation by the committee and the decision is final a licensee is sentenced to imprisonment for a term of at least six months a licensee fails to show good cause why his license should not be terminated due to non-compliance on the provisions of the Regulations. This is by the manager with the approval of the committee by notice of a duration specified within the notice. However, a licensee can appeal in writing to the Minister within twenty-eight days and the Minister's decision is final the licensee gives the manager six months notice in writing of his intention to surrender the license
	<ul style="list-style-type: none"> the manager, on instruction of the Minister, giving the licensee 12 months notice in writing of his intention to terminate the license A licensee should be compensated for capital and labour expended by him in improving the holding

Obligations

The licensee is required maintain the boundary of his plot in a manner satisfactory to the Authority/manager. Here, however, the African District Council of Embu (Mwas) By-Laws were wider because they included the demarcation of the boundary in a manner satisfactory to the Authority as an additional condition under this provision

- reside in a village, erect and maintain a dwelling-house and any other necessary buildings to the satisfaction of the Authority;
- seek the permission of the Authority before allowing any person who is not his wife or dependent to reside on, cultivate or make use of his plot in any other way;
- seek the permission of the Authority to cultivate any land other than that for which he has a license or to depasture any stock on any land within the area;
- seek the permission of the Authority to keep, herd or depasture stock in excess of the numbers of the stock entered on his license or to take out any stock from the area;
- declare to the Authority the natural increase of his permitted stock and comply with any instructions issued by the Authority as to their disposal;
- desist from occupying any house other than that allocated to him or permitted by the manager;

Duration

A licensee is entitled to occupy the land for the remainder of his life under the African District Council of Embu (Mwas) By-Laws. This too applies to the nominated successor.

Succession

- A successor needs to be above 18 years of age to actually succeed
- When a successor had not attained 18 years of age, then his family or clan were required to select a person to act for him and assume the rights and liabilities of the license until he reached the age of 18 years
- The nomination of the successor should be done within one year of a license being granted

• Same

• Same

- maintain his holding and all field, feeder and drainage channels to the satisfaction of the manager
- maintain to the satisfaction of the manager all irrigation channels and works on or serving his holding
- cultivate his holding to the satisfaction of, and in accordance with the crop rotation laid down by the manager, and comply with all the instructions given by the manager relating to the cultivation and irrigation of his holding
- seek the approval in writing from the manager before hiring or causing to be hired or employed stock or machinery for cultural operations, other than stock and machinery owned by the manager
- seek the written approval of the manager before absencing himself from the scheme for longer than one month
- deliver each crop -- other than paddy -- that has been harvested other than such portion as he may wish to retain for the his own consumption and that of his authorized dependents to the manager or otherwise dispose of it as per the instructions of the manager
- deliver all paddy harvested to the manager or otherwise dispose of it as per the instructions of the manager
- avoid keeping on his holding any stock in excess of those specified in his license, declare to the manager annually any natural increase in such stock and comply with the instructions of the manager as to their disposal
- avoid the willful or negligent damage of any road, bridge or culvert within the scheme
- not permit any of his stock to be upon any part of the scheme which is closed to stock or to damage any crops or water installations or communications or other property
- Every license is valid for a period of one year and from year to year thereafter
- Same
- When a successor has not attained the age of 18 years his guardian under customary law should appoint, within one month of the licensee's death and with the approval of the manager, a person to act on his behalf until the successor is of age.
- The nomination can be done at any time after the date of being granted a license but it must be in writing.
- a licensee can revoke or alter his nomination for successor by writing to the manager. However, no person nominated as a successor under these Regulations may succeed without the approval of the irrigation committee
- the authorized dependent may appeal to the court against the nomination of a successor within 30 days of the death of a licensee.

<p>GENERAL</p> <p>The Authority can:</p> <ul style="list-style-type: none"> - order the licensee to remove stock in excess of those entered in his license; - should the licensee fail to obey this order, confiscate and sell these excess stock after consultation with the African District Council Agricultural Committee and pay the proceeds from this sale, less any expenses of the sale, to the licensee; - authorize in writing any person to uproot, graze or otherwise dispose of any crop planted contrary to any instruction to a licensee and not be liable to pay compensation for such disposal; - serve a written notice to the licensee to comply with the provisions of the By-laws or of any instructions given under them or any other operative law or with the terms of his license or with the By-laws of good husbandry; - summon the licensee should he fail to comply with the terms of the written notice, to show cause why his license should not be terminated; 	<p>The manager has power to:</p> <ul style="list-style-type: none"> - allocate to a licensee a house to be occupied by him within the scheme or permit a licensee to erect his own house; - give a licensee notice as to the repairs to the house he considers necessary and a time-schedule within which these should be undertaken; - cause necessary repairs to the house to be carried out and recover the cost from the licensee; - authorize the construction of buildings or any other works on his holding or elsewhere in the scheme: - Direct that a structure or building erected without his consent be removed and the land returned to its original state and if this is not done, enter the building or structure so as to demolish it and recover the costs for such removal from the licensee; - Order the destruction of any crops planted in contravention of his instructions or the provisions of the Regulations and recover the expenses of this destruction from the licensee without being liable to pay compensation; - Cultivate licensee(s) crops by machinery, apply fertilizers or manure, treat crops or stock in any way to protect them from disease, pests or damage of any kind and recover the costs of these from the licensee(s); - Order a licensee to remove all additional stock and should this not be done, confiscate and sell this stock at the expense of the licensee - Order a licensee to take such measures as he deems appropriate to remedy the negligence of the licensee in the use of land, the use of irrigation, water or the cultivation of his crop and if these are not followed, to take such measures as he deems necessary to safeguard the crop, preserve the holding and irrigation water and recover the costs of such measures from the licensee - where the licensee is absent for any reason, take such measures as he considers necessary to safeguard the crop and preserve the holding and irrigation water and recover the costs of any measures from the licensee - repair any damage that may be caused willfully or negligently by a licensee at the cost of the licensee - make deductions from the proceeds of any sale of crops and stock belonging to a licensee to cover: <ul style="list-style-type: none"> 1. costs incurred by the manager - in arranging for the cultivation of the holding, the repair and removal of any building or structure, the destruction of any crops, the provision of manure, fertilizers, insecticides or any agricultural operations, the collection, processing and marketing of crops, remedying the negligence of the licensee or safeguarding crops or preserving the holding, repairing any damage caused by stock or by willful or negligent conduct by a licensee 2. any amounts due for rates payable for water and other services for his holding as provided for by the Minister, any outstanding advances made to the licensee for the purpose of cultivation, irrigation or other improvement of his holding and any other charges that the Minister may agree to on recommendation of the committee - issue a permit on who can drive a motor vehicle within the scheme on any road other than a public road and in what circumstances that it could be done - in the event of an emergency, order all licensees to undertake emergency repair work in any part of the scheme - serve a written notice on a licensee requiring him to comply with any of the provisions of the Regulations or any instructions issued under these or any other operational law - summon a licensee to show cause why his license should not be terminated should he fail to comply with the written notice to comply with the Regulations or instructions issued thereunder or any other operational law
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APPENDIX II

NIB's Funding Sources

NIB'S FUNDING SOURCES	
Date	Funding Source
1944/5—1953	Colonial Development and Welfare Emergency Funds (UK)
1954/5	International Co-operation Administration (USA) and Government of Kenya
1963	Miscellaneous Revenue Surplus
1965—1969	Freedom from Hunger (UK)
1969—1971	Kreditantilt fur Wlzdeufbau, Germany
1971—1973	Kreditantilt fur Wlzdeufbau, Germany
1977—1979	Government of Kenya

Source: Mwea Growers Multipurpose Society file

Figures for other years unavailable

APPENDIX III (a)

DAILY NATION, THURSDAY, DECEMBER 16, 1998

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NATIONAL IRRIGATION BOARD



CAVEAT EMPTOR (BUYER BEWARE)

PUBLIC NOTICE

It has come to the Board's notice that some businessmen are intending and have made plans to buy rice from National Irrigation Board (N.I.B.) rice farmers particularly in Mwea Irrigation Scheme.

National Irrigation Board is hereby warning the said businessmen that the rice grown in NIB schemes is produced through the financial participation of the National Irrigation Board. It is financed on condition that the same once harvested be delivered to the National Irrigation Board, for the purpose of cost recovery, who after marketing pay their dues. The Mwea farmers have signed agreements with the Board to this effect.

The businessmen intending to purchase the said paddy rice from Mwea farmers are hereby warned that such purchase is against the law and legal action shall be taken against them at their own cost.

BY ORDER OF THE BOARD.

No. re Exhibit marked Final
dated in the annexed Affidavit
Flower Mwanga
Sworn before me on 10th
day of Dec 1998
[Signature]
Notary Public

APPENDIX III (b)

ST. ABULAH STANWALU DE WUGBIL 91 1995 (14)

TEL: 72312 & 72354
FAX NO. 72317/72329

CONDITIONS OF SALE
CASH at the fall of the hammer.

MWEA RICE GROWERS MULTIPURPOSE CO-OPERATIVE SOCIETY

PUBLIC NOTICE

Let it come to the public notice that Rice in Mwea is a property of the Rice farmers. National Irrigation Board comes in just as a facilitator, whereby they provide financial and technical assistance to farmers at a fee. Since National Irrigation Board was formed through a parliamentary Act in 1960, farmers have all along been exploited through this Act.

With liberalisation of the economy and in particular the agriculture sector we would like to inform the public that the monopoly National Irrigation Board have had is no more. The National Irrigation Board Act which purport to be the governing law is outdated and contravenes chapter V Section 73 and 75 of the Kenya Constitution.

Hence the society which is fully owned by the farmers takes over the mantle of handling marketing and all the process of manufacturing the rice.

Let the public take notice that Mwea rice farmer society have decided to market their rice through the cooperative and not through the National Irrigation Board. This resolution was arrived at their annual general meeting of 20th November, 1998 attended by all the 3,500 farmers representing more than 200,000 residents who benefit directly in the scheme.

The agreements NIB claims to have entered with farmers are null and void because they were signed under duress and no witnesses were involved. The society appeals to any willing and able buyer to come through the society as the legally constituted organisation.

- Farmers Representatives:-**
- | | |
|---------------------------|----------------|
| 1. Joseph Ng'ang'a | Vice Chairman |
| 2. John Mureithi | Sec. Manager |
| 3. Dominic Thindl | Hon. Secretary |
| 4. Benson Karimi | Treasurer |
| 5. Hon. Alfred M. Nderitu | M.P. |

APPENDIX IV

NATIONAL IRRIGATION BOARD

LENANA ROAD
PO Box 30372
NAIROBI

Telegrams: IRRIGATION
Telephones: 711380, 711468
711487, 712475, 71268

Our Ref: C/M/2VOL III

Date: 17/3/99

Your Ref:

NAME: MURRY GITHANI

F/NO: 4049

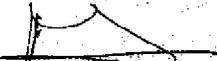
Thro'
The Irrigation Officer,
KARABA Section

forwarded - 18/3/99
after
I.O.
Karaba section.

RE: NOTICE OF INTENTION TO TERMINATE LICENCE

This is further to our letter to you dated 9/2/99 pointing to you that you have acted contrary to the provisions of the Irrigation Area Rules by failing to deliver the paddy to the Board as required.

In view of the above, the Board is calling upon you to show good cause why your licence should not be terminated. Your letter should reach the undermentioned office within 10 days of the date of this letter, failure to which we shall proceed further and have your licence terminated.



I.S.O. OGOMBE
SENIOR SCHEME MANAGER

F.N/Inn.

APPENDIX V

The African District Councils Ordinance, 1950 (Revised Edition, 1959)

IN EXERCISE of the powers conferred by section 36 and 37 of the African District Councils Ordinance, 1950, the African District Council of Embu having been authorised by the Minister so to do, has made the following By-laws:

The African District Council of Embu (MWEA) BY-LAWS, 1960

1. These By-laws may be cited as the African District Council of Embu (Mwea) By-laws, 1960.
2. In these By-laws, except where the context otherwise requires:

“African Advisory Committee” means the Committee appointed under paragraph (1) By-law 3; the area of land specified in the First Schedule of these

“area” means xxxxxxxxxxxxxxxxxxxx By-laws

“council” means the African District Council of Embu

“dependant” means, in relation to a licensee, his father and mother and such of his children as are unmarried and under the age of eighteen years;

“Authority” means the Chairman of the African District Council of Embu or any person nominated by him in writing.

“licence” means a licence, granted under By-law 4 of these By-laws, to occupy the area or any portion thereof;

“licensee” means any group, family or individual to whom a licence has been granted, and includes any person who succeeds a licensee, or who acts for such successor, under by-law 7;

DYING TO BE FREE

“Provincial Commissioner” means the Provincial Commissioner of the Central Province;

“register” means the register maintained in accordance with by-law 5(2);

“registered dependant” means any person whose name is entered in the register as being a dependant of a licensee;

“Settlement Officer” means such person as may from time to time be appointed by the Authority to be in charge of the area;

“Stock” means any bull, cow, bullock, heifer, calf, ox, sheep, goat, mule, donkey, or swine, and includes poultry and domestic animals.

3. (1) The Authority shall appoint a committee to be known as the African Advisory Committee, to advise him upon the exercise of his powers, duties and functions under the provisions of by-laws, 8, 12 and 13.
- (2) The African Advisory Committee shall consist of:
 - (a) one or more chiefs or sub-chiefs appointed under the Native Authority Ordinance and selected by the Authority and
 - (b) not less than three other persons selected by the Chairman in consultation with licensees or such of them as he deems it practicable to consult:

Provided that if the Authority so decides the committee shall consist only of the persons referred to in subparagraph (b) of this paragraph.
4. Any persons who occupies land or who possesses, herds or depastures stock otherwise than under and in accordance with the terms of a valid licence granted by the Authority in respect of which he is the licensee shall be guilty of an offence against the By-laws.
5. (1) Every licence shall be in the form set out in the Second Schedule and shall be prepared in triplicate; the original shall be given to the licensee and the duplicate to the Settlement Officer, and the triplicate shall be kept by the Authority.
- (2) The Authority shall maintain a register in which shall be entered the name of every licensee, together with the names of his dependants, the details of the stock permitted to him, the number and size of the plot which he may occupy and on which he may practice agriculture and

THE STRUGGLE FOR RIGHTS IN MWEA

the name of the person nominated as the licensee's successor as hereinafter provided.

6. (1) Before delivering the licence to the licensee the Authority shall:
 - a) cause these By-laws to be read and explained to the applicant in a language which he understands;
 - b) give the applicant a copy of these By-laws;
 - c) obtain from the applicant in writing a receipt for the By-laws, an acknowledgment that he understands them and an undertaking to observe them; such receipt, acknowledgment and undertaking shall be in the form set out in the Third Schedule.
 - d) On delivering the licence to the licensee the Authority shall inform him of the number of his registered dependants and the number and kinds of stock which he may keep, herd or depasture, and the fees and rents payable under paragraph (a) or rule 8.
7. (1) Within one year of being granted a licence the licensee may nominate another who shall, in the event of the licensee's death, assume the rights and liabilities prescribed by these By-laws.
 - (2) No person nominated as successor may succeed until he reaches the age of eighteen years; if he has not reached that age, his family or clan shall select a person who shall act for him and shall assume the rights and liabilities prescribed by these By-laws until the successor reaches the age of eighteen years. If no such person is selected who is able and willing to act the licence shall be terminated.
8. A licence shall entitle the licensee to occupy the land defined therein for the remainder of his life, and thereafter his nominated successor for the remainder of his life subject to the following conditions:
 - (a) the council with the approval of the licensee shall pay such dues as may be prescribed by the Provincial Commissioner;
 - (b) the licensee shall demarcate and maintain the boundaries of his plot to the satisfaction of the Authority;
 - (c) the licensee shall himself reside in a village and shall erect and maintain therein a dwelling-house and any other necessary buildings to the satisfaction of the Authority;
 - (d) the licensee shall not, except with the permission of the Authority allow

DYING TO BE FREE

any person who is not his wife or registered dependant to reside on, cultivate, graze or otherwise use his plot;

- (e) except with the permission of the Authority the licensee shall not cultivate any land, except the plot of land defined in his licence, Nor depasture any stock on any land within the area;
 - (f) the licensee shall not, except with the permission of the Authority, keep, herd or depasture within the area any stock in excess of the numbers of the stock entered on his licence and shall not introduce or take out of the area any stock without the written permission of the Authority;
 - (g) the licensee shall comply with all instructions which may from time to time be given by the Authority with regard to the branding, dipping, inoculating, herding, grazing or watering of stock, the construction and preservation of firebreaks, the production, disposal and use of manure and compost, the preservation of fertility of the soil and the prevention of soil erosion, the felling, stumping, clearing and burning of trees and vegetation, the type and area of any crops to be planted (including Fodder crops and trees), the control of the use of beehives and the production of silage and hay, or by the Authority or the Medical Officer of Health with regard to the welfare, health and good discipline of the inhabitants of the area;
 - (h) the licensee shall declare to the Authority the natural increase of his permitted stock and comply with any instructions issued by the Authority as to their disposal.
9. Any licensee who fails to comply with any of the conditions set out in By-law 8, or with any lawful order or instruction issued thereunder, shall be guilty of an offence against these By-Laws.
10. (1) Where any stock in excess of the numbers entered in the licence, which has not been declared under the provisions of paragraph (h) of By-law 8, is found in possession of or under control of any licensee within the area, the Authority may order the licensee to remove such excess stock from the area within such reasonable time as he shall specify.
- (2) If the licensee fails within such time to comply with such order, the Authority may, after consultation with the African District Council Agricultural Committee, confiscate and sell such excess stock, paying the proceeds thereof, less any expenses of the sale to the licensee.
11. The Authority may in writing authorize any person named in such writing to uproot, graze or otherwise dispose of any crop planted in wilful contra-

DYING TO BE FREE

- any person who is not his wife or registered dependant to reside on, cultivate, graze or otherwise use his plot;
- (e) expect with the permission of the Authority the licensee shall not cultivate any land, except the plot of land defined in his licence, Nor depasture any stock on any land within the area;
 - (f) the licensee shall not, expect with the permission of the Authority, keep, herd or depasture within the area any stock in excess of the numbers of the stock entered on his licence and shall not introduce or take out of the area any stock without the written permission of the Authority;
 - (g) the licensee shall comply with all instructions which may from time to time be given by the Authority with regard to the branding, dipping, inoculating, herding, grazing or watering of stock, the construction and preservation of firebreaks, the production, disposal and use of manure and compost, the preservation of fertility of the soil and the prevention of soil erosion, the felling, stumping, clearing and burning of trees and vegetation, the type and area of any crops to be planted (including Fodder crops and trees), the control of the use of beehives and the production of silage and hay, or by the Authority or the Medical Officer of Health with regard to the welfare, health and good discipline of the inhabitants of the area;
 - (h) the licensee shall declare to the Authority the natural increase of his permitted stock and comply with any instructions issued by the Authority as to their disposal.
9. Any licensee who fails to comply with any of the conditions set out in By-law 8, or with any lawful order or instruction issued thereunder, shall be guilty of an offence against these By-laws.
10. (1) Where any stock in excess of the numbers entered in the licence, which has not been declared under the provisions of paragraph (h) of By-law 8, is found in possession of or under control of any licensee within the area, the Authority may order the licensee to remove such excess stock from the area within such reasonable time as he shall specify.
- (2) If the licensee fails within such time to comply with such order, the Authority may, after consultation with the African District Council Agricultural Committee, confiscate and sell such excess stock, paying the proceeds thereof, less any expenses of the sale to the licensee.
11. The Authority may in writing authorize any person named in such writing to uproot, graze or otherwise dispose of any crop planted in wilful contra-

vention of any instruction given to a licensee under paragraph (g) of By-law 8; no compensation shall be payable for any crop which has been so uprooted, grazed or otherwise disposed of.

12. (1) Where the Authority is satisfied that a licensee has failed to comply with the provisions of any of these By-laws, or of any instruction given thereunder or under any other law for the time being in force, or with the terms of his licence or with the By-laws of good husbandry, he may serve a written notice of such failure upon the licensee requiring him to do such things to comply with the said provisions, terms or By-laws within such time as is specified in the notice.
- (2) If the licensee fails within such time to comply with the terms of such notice, the Authority may, by notice in writing, call upon the licensee to show cause, on a date specified in the notice, to the Authority why his licence should not be terminated.
- (3) The licensee shall appear personally on such date before the Authority sitting with at least three members of the African Advisory Committee as assessors but shall not be bound by their opinions;

Provided that where the opinion of the majority of the assessors differs from that of the Authority or if the licensee so requests, the matter shall be referred to the Provincial Commissioner whose decision shall be final.
- (4) If the licensee fails to show cause to the satisfaction of the Authority, or, if the matter is referred to the Provincial Commissioner, to the satisfaction of the Provincial Commissioner, the licence shall, or if the licensee has been convicted of a cognizable offence under any other law for the time being in force the licence may, be terminated by the Provincial Commissioner.
- (5) Where the Provincial Commissioner terminates a licence under the provisions of paragraph (4) he shall inform the licensee accordingly and shall give to him notice in writing requiring him to remove himself, his dependants and his stock from the area within a period specified therein; such notice shall operate to extinguish all rights and benefits of the licensee under these By-laws.

13. (1) Any licensee who is required under the provisions of By-law 12 to remove himself from the area shall be entitled to receive from the Authority compensation for crops which he cannot harvest and for buildings and improvements on the land.

DYING TO BE FREE

- (2) Where any claim for compensation arises under paragraph (1) of this by-law the African Advisory Committee shall determine the compensation to be paid.
 - (3) The Authority may dispose of any crops, buildings or improvements for which compensation has been paid in such manner as he thinks fit, and may recover the amount of the compensation or part thereof, from the next licensee licensed to occupy the land.
14. The Authority may order in writing authorize any person named in such order to perform such of the acts which he himself is authorised by these By-laws to perform, as may be specified in such order:
- Provided that:
- (a) an appeal shall lie to the Authority against any order issued by a person authorized under this by-law;
 - (b) the power conferred by by-laws 6, 11, 12, 13 and shall not be so delegated.
15. Notwithstanding the foregoing provisions of these By-laws the Authority may, on giving not less than six months' notice of his intention so to do, terminate a licence, paying in respect of such termination compensation for buildings and improvements and for any crops planted before the giving of such notice which the licensee by such termination is prevented from harvesting, such compensation to be assessed in accordance with by-law 13.
16. Any moneys accruing from the sale of stock or crops under these By-laws shall, after deducting any expenses entailed, be utilized in such manner as the Council may direct.

First Schedule (By-law 1)

That part of the Embu District which is contained within the following boundaries commencing at the junction of the Tana and Thiba Rivers thence by the Thiba River to the junction of the Thiba and Ruringazi Rivers thence by the Ruringazi to its junction with the Nyamindi River thence by the Nyamindi River to its junction with the boundary of the consolidated areas of Mwea thence by the southern boundary of that area to its intersection with the Wainwright Line thence by that boundary to its intersection with the Tana River and thence by that River to the point of commencement.

Second Schedule (By-law 5)

Licence No.
..... son of.....
of the District of the
Province is hereby authorised to occupy Plot No.
of the Native Reserve, and to keep within
Mwea not more than the following number of stock:

- Bovines
- Sheep
- Goats
- Mules
- Donkeys
- (Other stock or domestic animals)

Subject to the conditions prescribed by the African District Council of Embu (Mwca) By-laws, 1960.

SIGNED this day of..... 19

.....
Chairman

In accordance with by-law 6 of the said By-laws I have caused these conditions to be read and explained to the above-named licensee in the language, which he understands.

.....
Chairman

Date.....

.....
(Signature or thumb print of licensee).

.....
Witness

Third Schedule (By-law 6 (1)(C))

I son of
of the District of the
Province hereby acknowledge receipt of a copy of African District Council of
Embu (Mwea) By-laws 1960. I have had these By-laws explained to me and I
fully understand them and I undertake to observe all these By-laws.

Licence No.....

.....
(Signature or thumb print of licensee)

Date.....

.....
(Witness)

Made this 17th day of December, 1960. BY ORDER of the African District
Council of Embu.

Embu, ate Chairman, EMBU AFRICAN DISTRICT

Recommended

Nyeri, Date Provincial Commissioner, Central Province

Approved

Nairobi, Date MINISTER FOR LOCAL GOVERNMENT
AND LANDS

APPENDIX VI

The Irrigation Act CAP 347 Laws of Kenya Subsidiary Legislation

Designated Areas under section 14

NATIONAL IRRIGATION SCHEMES

- (a) the area known as Perkerra Irrigation Area in the Baringo District of the Rift Valley Province, the boundaries of which area are set out in the Schedule to a setting apart notice published as Gazette No. 4643 of 1959;
- (b) the area known as the Mwea/Tebere Irrigation Area in the Kirinyaga District of the Central Province, the boundaries of which area are set out in Schedule to setting apart notices published as Gazette Notices Nos. 3090, 3093, 3095, 3096, 3097, 3098, 3100, 3101, 3102, 3103 of 1960;
- (c) the area known as the Galole Special Settlement Area in the Tana River District of the Coast Province, the boundaries of which area are delineated in Legal Notice No. 274 of 1963; and
- (d) the area known as the Ahero National Irrigation Pilot Scheme in the Kisumu District of the Nyanza Province, the boundaries of which area are set out in the Schedule to a setting apart notice published as Gazette Notice No. 2163 of 1968.

Regulations under section 27

THE IRRIGATION (NATIONAL IRRIGATION SCHEMES) REGULATIONS

1. These Regulations may be cited as the Irrigation (National Irrigation Schemes) Regulations, and shall apply to such areas of land as the Minister may, by notice in the Gazette, designate to be national irrigation schemes.

2. In these Regulations, unless the context otherwise requires:

“court” means the court having jurisdiction in the scheme;

“scheme” means any area designated to be a national irrigation scheme under section 14 of the Act;

“authorized dependent” means, in relation to a licensee, his father and mother, wives and such of his children as are unmarried and under the age of eighteen years:

“committee” means an irrigation committee appointed under regulation 3;

“holding” means that part of an area specified in a licence;

“licence” means a licence granted under regulation 4;

“licensee” means any person to whom a licence has been granted, and includes any person who succeeds a licensee under regulation 7;

“manager” means such person as may from time to time be appointed by the Minister to be in charge of a national irrigation scheme.

3. (1) The Minister may appoint a committee for any scheme, such committee to be known as an irrigation committee, to be responsible for advising the manager on the general administration of the scheme in accordance with Government policy.
- (2) The committee may either be the District Agricultural Committee of the district in which the scheme is situated or may be composed of such members as the Minister may appoint.
4. Any person who resides in, carries on business in, or occupies any part of the scheme or grazes any stock thereon shall, unless he is the holder of a valid licence granted to him under these Regulations by the manager with the approval of the committee or is the authorized dependant of such licensee, be guilty of an offence.
5. (1) Every licence shall be in the form in the First Schedule, and shall be prepared in duplicate; the original shall be given to the licensee and the duplicate shall be retained by the manager.
- (2) The manager shall maintain a register in which he shall enter the name of every licensee, the number of his holding and the names of his authorized dependants.

- (3) The manager shall also maintain a separate register in which he shall enter the name of any successor nominated by the licensee under regulation 7, together with the number of the holding in respect of which the successor has been nominated.

6. Before issuing a licence, the manager shall:

- (a) cause these Regulations to be read and explained to the licensee in a language which he understands;
- (b) give the licensee a copy of these Regulations; and
- (c) obtain from the licensee, in the form in the Second Schedule, a receipt for the Regulations, an acknowledgment that he understands them and an undertaking to observe them.

7. (1) A licensee may, at any time after the date of being granted a licence, nominate, in writing to the manager, another person to succeed him as licensee, in the event of his death; and a licensee may at any time, in writing to the manager, revoke or alter the nomination which may have been made by him:

Provided that no person nominated as successor may succeed until he has attained the apparent age of eighteen years; if he has not reached the age, his guardian under customary law may, within one month of the licensee's death, and with approval of the manager, appoint a person to act on his behalf until the successor is of age.

- (2) No person nominated as a successor may succeed without the approval of the committee.
- (3) The authorized dependant of a deceased licensee may, within thirty days of his death, appeal to the court against the nomination under paragraph (1), of a successor.
- (4) The authorized dependant may:
 - (a) where a licensee dies without having nominated a successor in accordance with paragraph (1); or
 - (b) where, under paragraph (3), an appeal to the court against the nomination of a successor has been successful, within one month of the death of the licensee or one month after the determination of the appeal, as the case may be, nominate, in writing to the manager, a successor who must be approved by the court.

- (5) In the event of:
- (a) no person being appointed within the time prescribed in the proviso to paragraph (1); or
 - (b) no person being nominated within the time prescribed in paragraph (4); or
 - (c) any person nominated or appointed under this regulation failing to accept such nomination or appointment or failing to assume the responsibilities inherent in such nomination or appointment within a period of three months from the death of the licensee; or
 - (d) no successor being acceptable to the committee, the holding shall be deemed to have been vacated, the license in respect of such holding shall terminate, and a fresh licence may be granted in accordance with regulations 5 and 6.

- (6) In the event of a holding deemed to have been vacated in terms of paragraph (5):
- (a) the manager may make provision for the cultivation of any such holding and where appropriate recover the costs from the incoming licensee; and
 - (b) in accordance with regulation 23 reasonable compensation may be paid to the authorized dependant of a licensee in respect of any improvement to the holding, effected by the licensee.

8. (1) Every licence be granted subject to the following conditions:
- (a) a licensee shall devote his full personal time and attention to the cultivation and improvement of his holding and shall not, without the permission, in writing of the manager allow any other person to occupy his holding or to cultivate it on his behalf;
 - (b) a licensee shall maintain the boundaries of his holding in a manner satisfactory to the manager;
 - (c) a licensee shall maintain at all times his holding and all field, feeder and drainage channels to the satisfaction of the manager;
 - (d) a licensee shall maintain to the satisfaction of the manager all irrigation channels and works on or serving his holding;
 - (e) a licensee shall cultivate his holding to the satisfaction of, and in accordance with the crop rotation laid down by the manager, and

shall comply with all instructions given by the manager relating to the cultivation and irrigation of his holding.

- (f) a licensee shall comply with all instructions given by the manager with regard to good husbandry, the branding, dipping, inoculating, herding, grazing or watering of stock, the production and use of manure and compost, the preservation of the fertility of the soil, the prevention of soil erosion, the planting, felling, stumping and clearing of trees and vegetation and the production of silage and hay;
 - (g) a licensee shall not hire, cause to be hired or employ stock or machinery for cultural operations, other than stock and machinery owned by the manager, without prior approval, in writing from the manager;
 - (h) a licensee shall not absent himself from the scheme for longer than one month without prior approval, in writing, of the manager.
- (2) Any licensee who fails to comply with the conditions specified in paragraph (1) shall be guilty of an offence.
- (3) Any licensee who refuses, or without reasonable excuse fails to comply with any of the conditions of this regulation shall in addition to any penalty that may be imposed under paragraph (2), be liable to have his licence terminated by the Minister, on the recommendation of the manager (after confirmation by the committee) and the Minister's decision shall be final.
9. (1) A licensee shall pay to the manager, on demand such rates in respect of water and other services in respect of his holding as shall be calculated in accordance with rates prescribed by the Minister from time to time.
- (2) The whole or part of any rates prescribed under paragraph (1) may be varied or remitted by the Minister either generally or in any particular case, in his absolute discretion.
10. (1) The manager may allocate to a licensee a house to be occupied by him within the scheme, or may permit a licensee to erect his own house.
- (2) In either event it shall be the duty of the licensee to maintain his house and precincts to the satisfaction of the manager, and if the manager is dissatisfied with the condition of the house or precincts he may give written notice to the licensee to the repairs which he considers necessary and specify a reasonable time within which they must be completed.

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- (3) If the licensee fails to complete such repairs within the time specified and to the satisfaction of the manager, the manager may cause such repairs to be carried out and may recover the cost thereof from the licensee.
 - (4) The licensee may not occupy any house other than that allocated to him without prior permission, in writing, from the manager.
 - (5) A licensee shall not construct buildings or other works of any kind on his holding or elsewhere in the scheme without the prior consent, in writing, of the manager and in the event of his having erected structure or building without such consent, the manager may direct, in writing, that the structure be removed and the land returned to its original state and if licensee fails to comply with the direction within one month, the manager may enter the building or structure for the purpose of demolition and any expenses incurred by the manager for the removal of the building or structure may be recovered by the licensee.
11. (1) If a licensee is sentenced to imprisonment for a term of six months or more, his licence may be terminated forthwith
- (2) If a license is terminated under paragraph (1), a successor may be nominated or appointed in accordance with regulation 7.
12. The manager shall have power to order the destruction of any crops planted in contravention of his instructions or of the provisions of these Regulations and to recover the expenses incurred from the licensee and no compensation shall be payable in respect of crops so destroyed.
13. If, in the opinion of the manager, it would be beneficial to a licensee's crops or to all the licensees in the scheme to cultivate by machinery, or to apply fertilizers, or manure, or to treat any crops or stocks in any way to protect them against diseases, pests, or damage of any kind, then the manager may do so and recover the costs thereof from the licensee or licensees.
14. (1) As soon as each crop other than paddy has been harvested the licensee shall deliver it, other than such portion as he may wish to retain for his own consumption and that of his authorized dependants living with him, to the manager at a collecting station to be appointed by the manager, or shall otherwise dispose of it in accordance with the instructions of the manager.
- (2) The licensee shall deliver all paddy harvested to the manager at the collection station appointed by the manager, or shall otherwise dispose

of it in accordance with the instructions of the manager.

- (3) The licensee may purchase such quantities of milled rice from the manager for his own consumption and that of his authorized dependants living with him, as the manager may from time to time authorize.
 - (4) Any licensee who fails to comply with the provisions of paragraph (1) or (2) shall be guilty of an offence.
15. (1) The manager may, when necessary, collect, process and market the crops delivered to him under regulation 14 and may arrange for the sale of such crops, in which event he shall give the licensees details of the sales of all such crops as soon as possible.
- (2) The manager shall not be obliged to keep or sell the crops of individual licensees separately.
16. (1) A licensee shall not keep on his holding any stock other than those specified in his licence and shall declare to the manager annually the natural increase in such stock and shall comply with any instructions issued by the manager as to their disposal.
- (2) A licensee who fails to comply with the provisions of paragraph (1), or with any instructions issued by the manager thereunder, shall be guilty of an offence and where any additional undeclared stock is found in the possession of a licensee within the scheme, the manager may order a licensee to remove such additional stock from the scheme forthwith.
 - (3) If a licensee fails to remove his additional stock in accordance with an order to that effect given by the manager under paragraph (2), the manager may confiscate and sell such additional stock, paying the proceeds thereof, less any expenses incurred by such confiscation and sale, to the licensee.
17. (1) If in the opinion of the manager, a licensee has been negligent in the use of his land, the use of irrigation water or the cultivation of his crops, the manager may direct him to take such steps as the manager may specify to remedy the effects of such negligence, and, in the event of a licensee failing to comply with any such directions, the manager may take such measures as he considers necessary to safeguard the crop and to preserve the holding and irrigation water and may recover the costs of any such measures from the licensee.
- (2) If a licensee is absent owing to illness or any other reasons, the manager may take such measures as he considers necessary to safeguard the crop

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and to preserve the holding and irrigation water, and may recover the costs of any measures from the licensee.

18. A licensee shall not permit any of his stock to be upon any part of the scheme which is closed to stock or to damage to any crops or water installations or communications or other property, and shall be liable to pay the cost of the repair of any damage so caused.
19. (1) Any licensee who wilfully or negligently causes to be damaged any road, bridge, or culvert within the scheme shall be guilty of an offence.
(2) The manager may, where such damage has been caused by a licensee, repair any such damage and shall recover the cost of the repairs to such damage from the licensee.
20. The manager may, deduct from the proceeds of the sale, under regulations 15 and 16, of any crops or stock belonging to a licensee:
 - (a) the costs of expenses incurred by the manager.
 - (i) in the making of provisions for the cultivation of any holding under regulation 7 (6) (a);
 - (ii) in the removal of any building or structure or repairs carried out to any house under regulation 10;
 - (iii) in the destruction of any crops under regulation 12;
 - (iv) in providing manure, fertilizers, insecticides or any agricultural operations under regulation 13;
 - (v) in the collecting, processing and marketing of crops under regulation 15;
 - (vi) in remedying the negligence or safeguarding crops or preserving the holding under regulation 17;
 - (vii) in repairing any damage caused by stock under regulation 18;
 - (viii) in repairing damage under regulation 19 (2); and
 - (b) any amounts due for rates payable under regulation 9, any outstanding amount of any advance made to such licensee for the purpose of the cultivation, irrigation or other improvement of his holding, and such charges as may be agreed to by the Minister on the recommendation of the committee.
21. Any person who causes any motor vehicle to be driven within the scheme

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24. The manager shall have power, in the event of any emergency, to order all licensees to undertake emergency repair work in any part of the scheme, and any licensee who refuses to obey any such order by the manager shall be guilty of an offence.
25. Subject to the provisions of regulations 7, 8, 11 and 22, every licence shall be valid for a period of one year and from year to year thereafter, but may be terminated at any time:
- (a) by the licensee giving to the manager six months, notice in writing of his intention to surrender his licence;
 - (b) by the manager, on instruction of the Minister, giving to the licensee 12 months' notice in writing of his intention to terminate the licence.
26. Any person who:
- (a) unlawfully interferes with the flow of irrigation water in canals or the opening or closing of control gates within the area;
 - (b) makes unlawful use of irrigation water by taking irrigation water out of turn or otherwise;
 - (c) refuses to permit the authorized passage of irrigation water across the holding;
 - (d) wilfully damages or obstructs canals or control works; or
 - (e) refuses to accept or drain off irrigation water when required to do so, shall be guilty of an offence.
27. (1) Any person who is guilty of an offence under these Regulations shall be liable to a fine not exceeding two thousand shilling or to imprisonment for a term not exceeding two months, or to both such fine and such imprisonment.
- (2) Where any person is convicted of an offence under regulation 4, regulation 14 (4) or regulation 22 (7), the court may, in addition to any penalty which it may impose, authorize any administrative officer or police officer to cause such person, together with his dependants and property, if any, to be removed from the scheme.

First Schedule

LICENCE NO.....

**NATIONAL IRRIGATION SCHEME
LICENCE TO OCCUPY HOLDING**

..... son of

.....
of the District of the Province

is hereby authorised to occupy holding No.

of the National Irrigation Scheme for the

period from the day of, 19

to the day of, 19, and

from year to year thereafter unless sooner terminated in accordance with the

provisions of the above Regulations, and to keep thereon not more than the

following number of stock :

- bovines,
- goats,
- sheep,
- mules,
- donkeys,
- (other stock)

subject to the conditions prescribed by the above Regulations.

Dated this day of, 19

.....
Manager

In accordance with regulation 6 of the above Regulations, I have caused the Regulations to be read and explained to the above-named licensee in the language, which he understands.

.....
Manager

Second Schedule

I son
of
of the District of the Province
hereby acknowledge receipt of a copy of the Irrigation (National Irrigation
Schemes) Regulations. I have had these Regulations explained to me and I fully
understand them and I undertake to observe them and to pay all sums of mon-
ey payable to me.

.....
Signature or thumb-print of the licensee

.....
Witness

.....
Date

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DIVING TO BE FREE is the story of the heroic struggle for existence, survival and dignity by Mwea rice farmers in Kenya. It traces the colonial origins of the Mwea Irrigation Scheme, the legal foundations of the agrarian tyranny of the Scheme and its place within the Kenyan political-economic context.

The report has adopted an integrated framework of analysis in the recognition that in Mwea, as is elsewhere in the world, there exists a close nexus between the political infrastructure and the economic infrastructure in the promotion of human rights violations. Thus, what was purely economic in Mwea was managed through political logic and administrative considerations.

Through this theoretical framework, the report hopes to give a practical assessment of the interrelatedness of all human rights - an idea that has already been given popular expression by the 1993 Vienna Declaration.

Ultimately, *DIVING TO BE FREE* hopes to demonstrate that poverty is not an issue of political forces or economics. In many instances it is induced and tailor-made to achieve certain ends or preserve certain status quo. By proving that poverty and deprivation in Mwea is a response to a failure of a dictatorial form of governance, this report will hopefully put to rest the myth of the dichotomy between human rights and development work and provide an opportunity for closer cooperation between actors within these sectors.



Kenya Human Rights Commission

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